



King County Ombuds Office
REPORT, FINDINGS & RECOMMENDATION

Whistleblower and Ethics Case # 2018-00443

Complainant: Kevin Brown

Respondents:

Dow Constantine, King County Executive

Christie True, Director, Department of Natural Resources and Parks

Bob Burns, Deputy Director, Department of Natural Resources and Parks

September 3, 2019

Table of Contents

1.	EXECUTIVE SUMMARY	1
2.	ALLEGATIONS AND PARTIES	1
3.	OMBUDS AUTHORITY AND JURISDICTION	2
4.	BURDEN OF PROOF AND ELEMENTS OF ALLEGED VIOLATIONS	5
5.	PROCEDURAL SUMMARY OF INVESTIGATION	6
6.	FACTS OF THE CASE	9
7.	FINDINGS	62
8.	OMBUDS COMMENTS AND RECOMMENDATION	75



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1. EXECUTIVE SUMMARY

This document comprises the King County Ombuds Office (Ombuds) final Report, Findings and Recommendations (Report) regarding Complaint No. # 2018-00443 (Complaint).

A summary of the Complaint's allegations, scope of the Ombuds authority and jurisdiction, applicable criteria and standards under the King County Code, and a procedural summary of the investigation are described in Sections 2, 3, 4 and 5. The pertinent facts related to the allegations are described at length in Section 6, followed by the Ombuds Findings at Section 7 and the Ombuds concluding Comments and Recommendation at Section 8.

Following a thorough investigation and evaluation of the Complaint and its underlying facts, the Ombuds finds that there is insufficient evidence to meet the standard of proof needed to sustain any allegation of the Complaint.

A brief final section of this report observes that the Executive serves two roles in County government that became factors in this matter. The Ombuds recommends that the Executive develop and issue guidelines for the roles and responsibilities of Executive staff and Departmental staff in the solicitation, selection, and administration of contracts.

2. ALLEGATIONS AND PARTIES

Complaint No. 2018-00443 was filed on April 11, 2018 by Complainant Kevin Brown (Brown) while serving as Director of Parks. The Complaint alleges that Respondents King County Executive Dow

Constantine (Constantine), Director of the King County Department of Natural Resources and Parks (DNRP) Christie True (True), and Deputy Director of DNRP Bob Burns (Burns) violated the following sections of the King County Code (KCC):

- Abuse of authority under KCC 3.42.020(F)(1)(b);
- Gross mismanagement under KCC 3.42.020(F)(1)(c);
- Gross waste of public funds under KCC 3.42.020(F)(1)(e);
- Special consideration or treatment under KCC 3.04.020(B); and
- Use of authority to induce or coerce under KCC 3.04.020(C).¹

The alleged violations are related to Respondents' (Constantine, True and Burns) involvement in certain vendor contracts at Marymoor Park dating from 2012 to 2018, and fall within four broad categories: (1) vendor selection and contract negotiation related to the five-year contract for the Marymoor Park Concert Series commencing in 2013; (2) accommodations made to the vendors who received that contract; (3) vendor selection and contract negotiation related to contracts for the Marymoor Park Concert Series commencing in 2017; and (4) vendor selection for the contract to provide concessions services at the CHOMP! Festival held at Marymoor Park.

3. OMBUDS AUTHORITY AND JURISDICTION

The voters of King County (County) established the King County Ombuds Office in the County Home Rule Charter of 1968. The Ombuds operates independently within the legislative branch of County government and is vested in KCC Chapter 2.52 with authority to investigate the administrative conduct of County agencies and employees in response to complaints from the public or on the Ombuds' own initiative, and to publish findings and recommendations for improving the administration of County government. The Ombuds strives to promote public confidence in County government by responding to complaints in an impartial, efficient and timely manner.

The Ombuds is further vested with jurisdiction and authority to investigate alleged violations of the County Whistleblower Protection Code, KCC Chapter 3.42 (Whistleblower Code); Employee Code of Ethics, KCC Chapter 3.04 (Ethics Code); and Lobbyist Disclosure Code, KCC Chapter 1.07 (the latter is not at issue in this case).

¹ Brown filed a second complaint alleging retaliation by True under KCC 3.42.030(F), identified as Complaint No. 2018-00444. The Ombuds dismissed the retaliation complaint pursuant to a settlement agreement between Brown and King County. Because of the settlement, this Report does not address Brown's retaliation claims. However, some of the facts underlying those claims also comprise portions of a factual basis for non-retaliation claims under KCC Sections 3.42.020(F)(1)(b), KCC 3.42.020(F)(1)(c), KCC 3.04.020(B) and KCC 3.04.020(C). To the extent this Report discusses True's actions underlying the alleged retaliation claims, it does so in the context of the noted KCC sections.

Whistleblower Code Jurisdiction and Remedies

The Whistleblower Code provides County employees with avenues to report what they believe to be "improper governmental action" (IGA). IGA is broadly defined as any action by a County officer or employee that is undertaken in the performance of official duties, whether or not the action is within the scope of employment, that, pertinent to the allegations in this case, includes the following:

- violations of any state or federal law or rule or County ordinance or rule;
- actions constituting an abuse of authority;
- actions constituting gross mismanagement;
- actions resulting in a gross waste of public funds.²

The Whistleblower Code defines "gross mismanagement" to mean "the exercise of management responsibilities in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation."³ A "gross waste of public funds" means "to spend or use public funds or to allow public funds to be used without valuable result in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation."⁴ The Whistleblower Code does not define "abuse of authority", but the Ombuds interprets the term to mean an intentional improper use of authority granted by law, rule or policy, or the unlawful use of such authority.

If the Ombuds finds an IGA following an investigation, the Ombuds must send the final report to the Complainant and the department head, and also to the County Executive and County Council if a department head is implicated. The responsible department must send the Ombuds and Complainant an action plan for addressing the IGA and completing corrective actions within a reasonable timeframe. If the department's actions are unsatisfactory, the Ombuds must report that to the County Executive and County Council. The Ombuds may impose a fine up to \$10,000 on the responsible department in "exceptionally egregious" cases where corrective actions are "highly unsatisfactory."⁵

Ethics Code Jurisdiction and Remedies

The Ethics Code establishes the following County policy:

the private conduct and financial dealings of public officials and employees and of candidates for public office shall present no actual or apparent conflict of interest

² KCC 3.42.030; 3.42.020(F)(1).

³ KCC 3.42.020(D).

⁴ KCC 3.42.020(E).

⁵ KCC 3.42.067(G)(2)(c) & (d).

between the public trust and private interest. Public confidence in government is essential and must be sustained by establishing and enforcing rules to assure the impartiality and honesty of officials and employees in all public transactions and decisions.⁶

This policy states the County Council's intent and informs the Ombuds' interpretation of the operative sections within the Ethics Code. The operative standards of the Ethics Code pertinent to the allegations in this case provide as follows:

No county employee shall grant any special consideration, treatment or advantage beyond that which is available to every other citizen.⁷

Except as authorized by law and in the course of the employee's official duties, no county employee shall use the power or authority of the employee's office or position with the county in a manner intended to induce or coerce any other person, directly or indirectly to provide the county employee or any other person with any compensation, gift or thing of value.⁸

A County employee found to have violated the Ethics Code is subject to civil penalties and discipline up to and including termination. A negligent or willful violation by a County employee may be prosecuted as a criminal misdemeanor. An elected official who violates the Ethics Code is subject to civil penalties and the possibility of recall.⁹

Application of Whistleblower and Ethics Codes in This Case

The Whistleblower Code directs the Ombuds to investigate any IGA report that meets the requirements of a complaint under the Ethics Code using the Ethics Code procedures. To constitute a valid complaint under the Ethics Code, a signed, written complaint stating the basis of the allegations must be filed with the Ombuds within five years of the date of the alleged ethics violations.

When ethics allegations are filed as IGAs but are not reported within five years of their occurrence, and the Complainant is a County employee covered by the Whistleblower Code, then the complaint may be investigated under the Whistleblower Code (if the complaint otherwise meets that Code's jurisdictional thresholds) because the Whistleblower Code does not contain a statute of limitations for IGA violations. This also shifts the focus of applicable penalties: If five years have passed since commission of an Ethics Code violation, the personal penalties that arise

⁶ KCC 3.04.015.

⁷ KCC 3.04.020(B).

⁸ KCC 3.04.020(C).

⁹ KCC 3.04.060.

under the Ethics Code cannot be applied and the remedy is instead limited to the agency-directed remedies available under the Whistleblower Code.

In this case, County employee Brown filed his IGA complaint on April 11, 2018, concerning actions occurring as far back as 2012. Under the jurisdictional rules described above, the Ombuds investigated the alleged ethics violations that occurred on or after April 11, 2013 under the Ethics Code, and investigated the alleged ethics violations occurring before April 11, 2013 under the Whistleblower Code as potential IGAs.

These requirements mean that all ethics allegations leading to Parks entering into five-year agreements for concert and concessionaire services with AEG and SES on January 28, 2013 may be analyzed only as alleged IGAs and are subject only to agency-directed penalties under the Whistleblower Code, whereas the IGA claims arising from actions occurring on or after April 11, 2013 must be analyzed under the Ethics Code and are subject to personal penalties.

4. BURDEN OF PROOF AND ELEMENTS OF ALLEGED VIOLATIONS

The burden of proof applicable to this investigation is the preponderance of evidence standard. This preponderance is judged on the more convincing evidence and its probable truth or accuracy, not on the amount of evidence. Thus, one clearly knowledgeable witness may provide a preponderance of evidence over a dozen witnesses with hazy testimony; or a signed agreement with definite terms may outweigh opinions or speculation about what the parties intended. Because the standard is not described in the KCC, citation to Black's Law Dictionary (11th ed. 2019) is appropriate:

Preponderance of the Evidence. The greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.

The KCC defines "improper government action" as any action by a County officer or employee that is undertaken in the performance of official duties, whether or not the action is within the scope of employment, that: (a) violates any state or federal law or rule or County ordinance or rule; (b) constitutes an abuse of authority; (c) is gross mismanagement; (d) creates a substantial and specific danger to the public health or safety; (e) results in a gross waste of public funds; or (f) prevents the dissemination of scientific opinion or alters technical findings without scientifically valid justification, unless disclosure is legally prohibited.¹⁰

¹⁰ KCC 3.42.020(F)(1).

The KCC does not define "abuse of authority." The Ombuds construes an abuse of authority to mean an intentional improper use of authority granted by law, rule or policy, or the unlawful use of such authority.

Gross mismanagement is defined by the KCC Whistleblower Code as "the exercise of management responsibilities in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation."¹¹ To sustain a finding of gross mismanagement under KCC 3.42.020(F)(1)(c), there must be facts that meet the preponderance of evidence standard.

A "gross waste of public funds" under the Whistleblower Code means to spend, use or allow public funds to be used without valuable result in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.¹² To sustain a finding of gross waste of public funds under KCC 3.42.020(F)(1)(e), there must be facts that meet the preponderance of evidence standard.

The Ethics Code states that "[n]o county employee shall grant any special consideration, treatment or advantage beyond that which is available to every other citizen."¹³ To sustain a finding of special consideration or treatment under KCC 3.04.020(B), there must be facts that meet the preponderance of evidence standard.

The Ethics Code also states that "(e)xcept as authorized by law and in the course of the employee's official duties, no county employee shall use the power or authority of the employee's office or position with the county in a manner intended to induce or coerce any other person, directly or indirectly to provide the county employee or any other person with any compensation, gift or thing of value."¹⁴ To sustain a finding of special use of authority to induce or coerce under KCC 3.04.020(C), there must be facts that meet the preponderance of evidence standard.

5. PROCEDURAL SUMMARY OF INVESTIGATION

On March 29, 2018, Brown and his attorney met with Ombuds staff to discuss a whistleblower complaint and the Ombuds investigation process, and to outline Brown's substantive concerns. On April 11, 2018, Brown and his attorney met again with Ombuds staff and its Director, during which Brown delivered his signed and dated whistleblower complaint alleging IGA against the Respondents. That Complaint No. 2018-00443 is the subject of this report. Later that day, Brown's attorney filed a second signed and dated complaint alleging retaliation against True.¹⁵

¹¹ KCC 3.42.020(D).

¹² KCC 3.42.020(E).

¹³ KCC 3.04.020(B).

¹⁴ KCC 3.04.020(C).

¹⁵ Complaint No. 2018-00444, resolved by the parties in mediation. See notes 1 and 17 and accompanying text.

In the following weeks, Brown submitted a binder of records in support of his Complaints. The Ombuds reviewed those records and determined that the complaints were validly filed pursuant to the jurisdictional thresholds in the Whistleblower Code. Because the allegations were unverified, the Ombuds made no findings at that time.

The Ombuds commenced its investigation on May 9, 2018, and on that date transmitted Brown's Complaints by letter, together with copies of his submitted records, to the Respondents through their legal counsel. The transmittal asked that the Respondents submit written responses to the Ombuds by June 8, 2018, along with records concerning relevant topics listed in the Ombuds' transmittal letter. On June 18, 2018, after an extension requested by the Respondents and allowed by the Ombuds, the Respondents through counsel submitted written responses and records as requested.

The Whistleblower Code imposes a one year timeline for completion of the whistleblower IGA investigation.¹⁶ It also affords an opportunity for the parties to settle complaints via mediation, and provides that investigation timelines be tolled during the mediation process to support potential resolution.¹⁷ For various periods of time following commencement of this investigation, the parties jointly or separately discussed, considered, initiated, and engaged in mediation processes. The Ombuds participated in, or was advised of, these activities and accordingly tolled the investigation timelines, resulting in a final report deadline of September 3, 2019.

The Whistleblower Code provides that the Ombuds shall close a retaliation investigation if the parties reach agreement as a result of mediation.¹⁸ On May 21, 2019, Brown and County signed a mediated settlement agreement resolving his retaliation Complaint No. 2018-00444. The Ombuds accordingly closed that investigation.

The Whistleblower Code further provides that the Ombuds may close a whistleblower IGA investigation if the parties reach a mediated agreement.¹⁹ The May 21, 2019 mediated settlement between the County and Brown provided that Brown would ask the Ombuds to close both the ethics investigation and the IGA investigation from which it originated. Brown did so by letter to the Ombuds dated May 22, 2019. The Ombuds has discretion to close a pending IGA investigation when closure is requested pursuant to a mediated settlement, and will do so if the Ombuds determines that closure is in the public interest. Here, the Ombuds reviewed the settlement and determined that the public interest would be best served by completing the IGA investigation and making an independent assessment of the facts and circumstances of the case. Factors considered in making that determination included the nature of the allegations, the facts

¹⁶ KCC 3.42.057(G) and 3.42.060(E). Retaliation claims are to be investigated within 135 days, subject to tolling during a mediation process.

¹⁷ KCC 3.42.057(H) and 3.42.060(G).

¹⁸ KCC 3.42.060(G)(1).

¹⁹ KCC 3.42.057(H)(1).

of the case, the mediation settlement terms, and the senior positions of public responsibility and trust held by Brown and the Respondents.

As part of this investigation and report, the Ombuds received and reviewed more than 5,000 pages of documentation and statements submitted by the parties, and interviewed the following witnesses (totaling more than 30 hours of recorded testimony):

- Kevin Brown, former Director, Parks and Recreation Division, DNRP
- Bob Burns, Deputy Director, DNRP
- Marcus Charles, Principal, Seattle Event Solutions
- Dow Constantine, King County Executive
- Ryan Dotson, Acting Business Development & Partnerships Manager, Parks Division
- Allen Draher, Law Office of Allen Draher, PLLC
- Jessica Emerson, Acting Deputy Director, Parks Division, DNRP
- Lisa Fitzhugh, Founding Partner, Creative Ground
- Danielle Hinz, former Chief Procurement Officer, King County
- Alex Kochan, former Vice President, Northwest, AEG
- David Meinert, former Principal, Seattle Event Solutions
- Rachel Smith, Deputy Executive and Chief of Staff, Office of the County Executive
- Katy Terry, Acting Director, Parks Division, DNRP
- Christie True, Director, DNRP
- Sung Yang, former Deputy Director and Chief of Staff, Office of the County Executive²⁰

The Ombuds Bates stamped most of the records it transmitted to the Respondents. Counsel for the Respondents then re-stamped the records it received from (and subsequently resent to) the Ombuds. When citing those records in this report the Ombuds uses the Respondents' Bates stamp identifier with the accompanying Respondent name and designated page number (for example, "OMSBUDS-553"²¹). The recorded witness interviews are cited in this report as "[Name] [Date] at [Time]" (for example, "Burns 6/3/19 at 01:35:56").²²

The Office of the Ombuds conducted this investigation with the oversight and direction of Ombuds-Director Amy Calderwood. This report summarizes that work.

²⁰ Sung Yang is no longer a County employee and thus is not a respondent in the case.

²¹ Due to typographical error the Ombuds Bates documents are prefixed "OMSBUDS" instead of "OMBUDS."

²² The Ombuds made audio recordings of all but two witness interviews, retaining written notes reviewed for accuracy by those two witnesses. Breaks taken during two of the recorded interviews resulted in the time stamps resetting to 00:00, which are cited using the letter A or B after the date to indicate the first (A) or second (B) portion of the paused interview (for example, "Meinert 5/16/19A at 12:02").

6. FACTS OF THE CASE

King County Parks

King County Parks and Recreation Division is one of four divisions within DNRP and manages more than 200 parks and 390 miles of trails, comprising more than 28,000 acres. The 2019-2020 King County Biennial Budget appropriates \$48,494,000 for Parks operations, mainly from the current levy.²³ True has served as Department Director of DNRP since 2010. True was previously Director of the Wastewater Treatment Division and has been a King County employee for 34 years.²⁴ Burns has served as Deputy Director of DNRP since 2003 and has been a King County employee for approximately 19 years.²⁵ Brown served as Director of the Parks Division from 2006 until May 2019.²⁶ Katy Terry (Terry) has been Acting Director of Parks since Summer 2018 and was Deputy Director of Parks for the previous nine years.²⁷ Jessica Emerson (Emerson) was Business Development and Partnerships Section Manager for Parks from September 2010 until February 2019 when she was appointed as Acting Deputy Director of Parks.²⁸ Ryan Dotson (Dotson) has been Acting Business Development and Partnerships Manager since April 2019.²⁹ His regular position since March 2011 is Business Development and Partnerships Program Manager.³⁰

Big Ideas Open Proposal Process

In 2002, the County Council changed Parks' funding structure by adopting the "Big Ideas" open proposal process. Big Ideas was intended to "increase[] flexibility to enter into concessions, leases and similar agreements that will facilitate the operation of, and revenue generation at, county park facilities."³¹ Big Ideas expanded Parks' noncompetitive concession contracting authority by allowing the County Executive or designee to "negotiate and enter into concession contracts with any person", including for-profit entities.³² That authority had previously extended only to concession contracts with non-profit organizations.

²³ Ord. 18835, Sec. 88, adopted November 14, 2018.

²⁴ <https://directory.kingcounty.gov/EmployeeList.asp?txtfname=c&txtlname=true&btnSearch=Search> (last accessed June 12, 2019); True 5/31/19 at 02:42.

²⁵ <https://directory.kingcounty.gov/EmployeeList.asp?txtfname=b&txtlname=burns&btnSearch=Search> (last accessed June 12, 2019); Burns 6/3/19 at 02:45, 04:40.

²⁶ Brown Follow-Up Answers at 7; Agreement and Release of All Claims, May 21, 2019. Brown resigned as Parks Director on May 27, 2019, and was appointed the next day as a Grants Officer for Parks per the mediated settlement agreement resolving his whistleblower retaliation complaint.

²⁷ Terry 2/14/19 at 03:10.

²⁸ Emerson 1/23/19 at 03:00; Emerson email to Stier, June 12, 2019.

²⁹ Dotson 6/13/19 at 38:29.

³⁰ *Id.* at 39:51; Dotson 12/21/18 at 22:59.

³¹ Transmittal Letter from Ron Sims, King County Executive, to Cynthia Sullivan, Chair, Metropolitan King County Council, September 16, 2002, <https://mkcclegisearch.kingcounty.gov/View.ashx?M=F&ID=780378&GUID=AB68A4D2-707B-4FC2-B2B8-542D2AFDCC7A> (last accessed June 15, 2019); Ord. 14509 § 38, 2002.

³² KCC 4.57.010; see KCC 7.12.150.

The Big Ideas program also did not require that concession contracting include features common to ordinary competitive public bidding processes such as published requests for proposals, predetermined project scopes or specific selection criteria available to all bidders.³³ Without the requirement of using predetermined selection criteria or the County's formal procurement system, Big Ideas loosened the oversight of certain contracts and enabled potential private partners, rather than Parks alone, to develop and propose creative revenue-generating proposals.³⁴ There is no standardized procedure for selecting a particular proposal if more than one proposer submits substantially similar proposals through the Big Ideas web portal.³⁵

Parks publishes an annual version of the Big Ideas process on its website, and that web portal remains open year-round.³⁶ The Big Ideas process has typically been used to secure agreements for active recreation proposals and events smaller than the Marymoor Park Concerts,³⁷ but also for some larger events or programs such as Cirque du Soleil, Big Backyard 5K,³⁸ and Cavalia,³⁹ as well as for food concessionaires like Subway.⁴⁰

Since 2002, Parks has used various names for the Big Ideas concessions process, which included the 2012 "Request for Ideas and Proposals" when Parks received and negotiated the contract proposals at issue in this case.⁴¹ In 2012, the Big Ideas announcement stated that Parks was "looking for ideas and proposals for new public-private partnership opportunities. If you have an idea, we want to hear it!"⁴² Under the heading "Evaluation and Selection", the announcement

³³ See KCC Chapter 2.93; Bob Burns written response to Kevin Brown complaint, June 18, 2018 (hereafter, "Burns Response") at 4; Thomson Reuters, "Public Procurement in the United States: overview", March 1, 2013, [https://content.next.westlaw.com/Document/I2ef1290d1ed511e38578f7ccc38dcbee/View/FullText.html?originatorContext=document&transitionType=DocumentItem&contextData=\(sc.DocLink\)&firstPage=true&bhcp=1](https://content.next.westlaw.com/Document/I2ef1290d1ed511e38578f7ccc38dcbee/View/FullText.html?originatorContext=document&transitionType=DocumentItem&contextData=(sc.DocLink)&firstPage=true&bhcp=1) (last accessed June 15, 2019); National Institute for Public Procurement, "Values and Guiding Principles of Public Procurement", <https://www.nigp.org/home/find-procurement-resources/guidance/values-and-guiding-principles> (last accessed June 15, 2019).

³⁴ In that way, Parks could "bring in ideas that we just didn't think of" from those new potential partners. Terry 2/14/19 at 16:49; Emerson 1/23/19 at 12:21.

³⁵ Burns 6/3/19 at 01:15:39.

³⁶ Emerson 1/23/19 at 12:21; True 5/31/19 at 47:18.

³⁷ Brown Follow-Up Answers at 5.

³⁸ Parks' first Big Backyard 5K, in 2010, netted Parks approximately \$13,000. "Parks 2010 Second Quarter Report", at 10, https://your.kingcounty.gov/dnrp/library/parks-and-recreation/documents/about/2010Q2_Final.pdf (last accessed June 17, 2019).

³⁹ Parks received \$371,708 in revenues from Cavalia in 2012. "Parks 2012 Second Quarter Report", at 6, https://your.kingcounty.gov/dnrp/library/parks-and-recreation/documents/about/2012Q2_Final.pdf (last accessed June 17, 2019).

⁴⁰ Burns Response at 2, note 5. In 2010, the King County Council approved a ten-year concession agreement with Subway for its Marymoor location, with anticipated revenues to King County beginning at nearly \$14,000 per year. 2010-0551 Staff Report, <https://mkkclegisearch.kingcounty.gov/View.aspx?M=F&ID=1110098&GUID=E5F5567C-5FD4-453D-851E-89E9BB39DD39> (last accessed June 15, 2019).

⁴¹ See BURNS 480; Burns Response at 2.

⁴² BURNS 480.

broadly stated that "King County may select proposals that are determined to be in the best interest of the public" based on various principles including projected revenue or other benefits to the County, compatibility with selected location, timing and feasibility, and "other relevant information."⁴³

Marymoor Park and the Concert Series

Marymoor Park was purchased by the County in the early 1960s as the County's first⁴⁴ and now most popular park with more than three million visitors per year.⁴⁵ The Marymoor Park Concerts summer series began in 2003 under a 2002 Special Use Permit and agreement between the County and The Lakeside Group (TLG),⁴⁶ a locally-based concert promoter aligned or affiliated with worldwide entertainment company Live Nation.⁴⁷ The initial five-year agreement allowed (and was amended in 2005 to require⁴⁸) TLG to produce a minimum of eight and up to approximately 15 shows per year, and granted TLG exclusive use of certain portions of the park for those concerts.⁴⁹ TLG was required to pay the County the greater of \$10,000 per concert or 10% of ticket sales, sponsorships and merchandise. The TLG agreement allowed TLG to sell concessions itself or to contract with a concessionaire and required that TLG pay 10% of concession revenues to Parks.⁵⁰ Parks and TLG renewed the agreement for a second five-year term in 2007.⁵¹

Combined concert, food, and beverage revenues to the County during the TLG operating period was below \$300,000 for the inaugural 2003 concert season, dipped lower for two years, rose to a high of nearly \$500,000 in 2008 when TLG booked nineteen shows,⁵² and fell to \$200,000 for the 2012 season.⁵³ Parks and others attributed the revenue decline partly to TLG booking fewer

⁴³ BURNS 483.

⁴⁴ "Marymoor Park", December 10, 2002, <https://www.historylink.org/File/4044> (last accessed June 17, 2019).

⁴⁵ <https://www.kingcounty.gov/services/parks-recreation/parks/parks-and-natural-lands/popular-parks/marymoor.aspx> (last accessed June 15, 2019).

⁴⁶ YANG 096-106.

⁴⁷ Dotson 12-21-18 at 01:25:32; Charles 5-22-19 at 47:30; <https://www.livenationentertainment.com/> (last accessed June 15, 2019). The record is not clear as to whether Parks procured the TLG agreement using the Big Idea portal or another process.

⁴⁸ CONSTANTINE 000020-000025.

⁴⁹ YANG 096.

⁵⁰ YANG 097-098.

⁵¹ See BURNS 038; Burns Response at 2.

⁵² Redmond Reporter, "Lineup set for season of Marymoor Park Concerts", May 30, 2008, <http://www.redmond-reporter.com/life/lineup-set-for-season-of-concerts-at-marymoor/> (last accessed June 17, 2019).

⁵³ Burns Response, Attachment A (Graph: Marymoor Concert Revenue); BURNS 6-3-19 at 23:46.

shows each year: Eleven shows in 2010,⁵⁴ seven shows in 2011,⁵⁵ and six shows for 2012.⁵⁶ Parks and others also observed that TLG was booking more and better shows at Chateau Ste. Michelle winery, a rival summer concert venue in Woodinville where TLG promoted another concert series.⁵⁷

Clise Mansion

The Clise Mansion is a part of Marymoor Park. From 1968 to 2002, it housed a museum dedicated to the history and heritage of lands and peoples east of Seattle.⁵⁸ The County ended the museum lease in 2002, intending to develop more-commercial activities in support of Parks and in accord with the Big Ideas partnership process.⁵⁹ Parks eventually entered into a concession agreement with Premier Properties to manage and operate Clise Mansion with the objective of offering a high quality facility for public rental that would maximize Parks' rental and event revenues.⁶⁰ By 2011 Parks was dissatisfied with Premier Properties' management because the company was late on payments and did not effectively promote Clise Mansion or attract events meeting the venue's potential.⁶¹ The concession agreement was not renewed in 2012.

AEG and SES; Meinert and Charles

Anschutz Entertainment Group is headquartered in Los Angeles and describes itself as the world's leading sports and live entertainment company. Its music division, AEG Presents or AEG Live (AEG), "is dedicated to all aspects of live music, including producing and promoting global and regional concert tours, music events and world-renowned festivals." AEG is involved in more than twenty-five music festivals and hosts more than 10,000 shows annually at more than ninety clubs and theaters worldwide.⁶² In the Seattle area, AEG manages Seattle's two Showbox music venues,⁶³ is the music promoter for the annual Bumbershoot music festival,⁶⁴ and books and

⁵⁴ "Marymoor Park Concerts 2010 lineup", <https://mynorthwest.com/67125/concerts-at-marymoor-2010-lineup/> (last accessed June 17, 2019).

⁵⁵ BURNS 038; Patch, "Marymoor Summer Concerts Series Includes Sublime, Ben Harper and Alison Krause", June 18, 2011, <https://patch.com/washington/bellevue/marymoor-summer-concerts-series-includes-sublime-ben-6d9dbe92c1> (last accessed June 17, 2019).

⁵⁶ The Seattle Times, "Norah Jones to headline Marymoor Park summer concerts", April 2, 2012, <https://www.seattletimes.com/entertainment/norah-jones-to-headline-marymoor-park-summer-concerts/> (last accessed June 17, 2019).

⁵⁷ OMSBUDS 257; Burns Response at 1; Brown Answer to Burns Response at 1; Emerson 1/23/19 at 20:50; Dotson 6/13/19 at 41:34; Constantine 6/5/19 at 30:14; Charles 5/22/19 at 42:13.

⁵⁸ "Marymoor Park", December 10, 2002, <https://www.historylink.org/File/4044> (last accessed June 17, 2019).

⁵⁹ "Marymoor Park", December 10, 2002, <https://www.historylink.org/File/4044> (last accessed June 17, 2019).

⁶⁰ See Concession Contract—Premier Properties, August 10, 2009.

⁶¹ OMSBUDS 257; BURNS 047.

⁶² See <https://www.aegworldwide.com/> (last accessed June 17, 2019).

⁶³ <https://www.aegworldwide.com/divisions/music/venues> (last accessed June 17, 2019).

⁶⁴ <https://www.bumbershoot.com/>; <https://www.aegworldwide.com/divisions/music/bumbershoot> (last accessed June 17, 2019).

operates Marymoor Park concerts.⁶⁵ AEG then-Vice President Alex Kochan (Kochan) managed AEG's Northwest Office in Seattle from 2006-2014,⁶⁶ when Rob Thomas (Thomas) took over.⁶⁷

Seattle Event Solutions (SES) is a concessionaire first formed in April 2011 to sell food and beverages at music-related events.⁶⁸ SES is the concessionaire for AEG's Showbox music venues and Bumbershoot festival, and for the Marymoor Park concerts since 2013.⁶⁹ The Marymoor concessions contract is SES's only contract with County government.⁷⁰

The original owners of SES were Marcus Charles (Charles) through a limited liability corporation, and David Meinert (Meinert).⁷¹ Before forming SES, Charles and Meinert had an interest in the annual Capitol Hill Block Party⁷² and significantly expanded the scale and length of that event.⁷³ Charles is an entrepreneur who has owned a number of businesses. In addition to co-producing the Capitol Hill Block Party, he started an e-cigarette business for cannabis and owns or is involved in Seattle's Local 360 Café & Bar, Mama's Cantina, The Crocodile music venue, and both Showbox music venues.⁷⁴ Charles said he had raised millions of dollars in Seattle and frequently speaks with "high-powered people."⁷⁵ Meinert has worked in the restaurant, bar, music, and festival businesses.⁷⁶ In addition to his previous roles as co-producer of the Capitol Hill Block Party and co-owner of SES, he has owned or had interests in the Seattle establishments Lost Lake Café

⁶⁵ <https://www.marymoorconcerts.com/venue-info> (last accessed June 17, 2019).

⁶⁶ Kochan 6/25/19 at 03:02; Charles 5/22/19 at 36:19; Dotson 6-13-19 at 09:12.

⁶⁷ Constantine 6/5/19 at 14:03.

⁶⁸ <https://ccfs.sos.wa.gov/#/BusinessSearch/BusinessInformation> (last accessed June 17, 2019).

⁶⁹ Meinert 5/16/19A at 24:35. SES employs up to 60 people seasonally. Charles 5/22/19 at 30:43.

⁷⁰ Charles 5/22/19 at 04:30.

⁷¹ Meinert 5/16/19A at 23:12; Washington Secretary of State, Certificate of Formation, April 6, 2011, file:///C:/Users/StierJ/OneDrive%20-%20King%20County/Downloads/3c7a38bf-ae45-47d5-ad8e-eb558f4639cb%20(2).pdf (last accessed June 17, 2019).

⁷² Meinert 5/16/19A at 23:19.

⁷³ Christopher Werner, "The Capitol Hill Block Party and How It Grew", Seattle Met, June 29, 2011, <https://www.seattlemet.com/articles/2011/6/29/seattle-capitol-hill-block-party-july-2011>, (last accessed June 17, 2019).

⁷⁴ Charles 5/22/19 at 03:06, 54:22.

⁷⁵ *Id.* at 01:16:57

⁷⁶ Meinert 5/16/19A at 05:26.

and Lounge, Comet Tavern, Grim's, Queer/Bar, Big Mario's New York Style Pizza, and Wide Open, Inc., which operates the 5 Point Café.⁷⁷ Meinert no longer holds a governing interest in SES.⁷⁸

Interactions Between Respondents and Principals of AEG and SES

Constantine Interactions

Constantine said he may have met Kochan before 2009 in the music community, and that their relationship was cordial but not very familiar.⁷⁹ Kochan said he never met Constantine one-on-one or in a group setting, but that he attended some of Constantine's political fundraising events.⁸⁰ Constantine said he was introduced to Thomas after his tenure with AEG's Seattle office began, and that his relationship with Thomas is friendly and professional. They last saw each other briefly at an event in late May 2019.⁸¹

Constantine said he has known Charles since the mid-2000s through the Seattle music community, and likely through earlier efforts regarding live music access for people under age twenty-one.⁸² Constantine said his relationship with Charles is cordial and professional, and that they last met in Spring 2019 for about 20 minutes to discuss business and politics.⁸³ Charles attends political fundraising events including those for Constantine, and has donated space at The Crocodile for events at the request of the Executive's Office.⁸⁴

Constantine and Meinert met in the 1990s while working with the Washington Music Industry Coalition on under-21 access to music.⁸⁵ Constantine said the relationship was friendly and professional until Meinert became the subject of 2018 press articles (concerning sexual assault and misconduct allegations). Constantine said he has not spoken with Meinert since, and their

⁷⁷ jseattle, "'Change of Corporate Officer' — the paperwork of the Meinert misconduct accusations", September 18, 2018, Capitol Hill Seattle Blog, <http://www.capitolhillseattle.com/2018/09/change-of-corporate-officer-the-paperwork-of-the-meinert-misconduct-accusations/> (last accessed June 17, 2019); Lester Black, "David Meinert Sells Stake in Lost Lake and Comet Tavern", The Stranger SLOG, August 2, 2018, <https://www.thestranger.com/slog/2018/08/02/30146767/david-meinert-sells-stake-in-lost-lake-and-comet-tavern> (last accessed June 17, 2019); Josh Feit, "Last Night: Big Mario's New York Style Pizza", Seattle Met, July 19, 2010, <https://www.seattlemet.com/articles/2010/7/19/last-night-66> (last accessed June 17, 2019); Washington Secretary of State, Annual Report, September 18, 2018, file:///C:/Users/StierJ/OneDrive%20-%20King%20County/Downloads/0011075838_OnlineReport.pdf (last accessed June 17, 2019)

⁷⁸ Washington Secretary of State, Amended Annual Report, October 8, 2018, file:///C:/Users/StierJ/OneDrive%20-%20King%20County/Downloads/0011169262_OnlineReport%20(2).pdf (last accessed June 17, 2019).

⁷⁹ Constantine 6/5/19 at 12:14.

⁸⁰ *Id.* at 28:20.

⁸¹ *Id.* at 14:01.

⁸² *Id.* at 16:25.

⁸³ *Id.* at 17:56, 18:28.

⁸⁴ Charles 5/22/19 at 53:26, 02:00:47; CONSTANTINE 001540; OMSBUDS 791-793.

⁸⁵ Constantine 6/5/19 at 16:15.

interactions are currently nonexistent.⁸⁶ Constantine also knew other individuals in the music and restaurant communities, including The Lakeside Group (TLG) owner David Littrell (Littrell).⁸⁷ Meinert said he has known Constantine through politics for years because groups Meinert was involved in supported some of Constantine's campaigns and because Meinert personally donated to Constantine campaigns and provided support by attending and hosting fundraisers.⁸⁸ Meinert characterized his participation in politics by saying "I've had beers with every mayor of Seattle except Durkan."⁸⁹ The record shows Meinert and Constantine interactions have included a range of public and personal matters over the years.⁹⁰

True Interactions

True has had little or no interactions with AEG and SES representatives. She said Kochan's name was not familiar to her and she did not believe she knew him.⁹¹ Kochan said they may have met at some point but that his main point of contact at the County was Emerson.⁹² True similarly said she does not know Thomas and believes she has never met him,⁹³ and that she does not know Charles and thinks she has never met or corresponded by email with him.⁹⁴ True recalled meeting Meinert once with Brown to discuss Marymoor Park's CHOMP! Festival, after she heard from Constantine or his chief of staff that Meinert had some ideas about Marymoor Park.⁹⁵

Burns Interactions

Burns said he met Kochan only one time in February 2012, has not emailed with him, and

⁸⁶ *Id.*

⁸⁷ Meinert 5/16/19A at 11:23; Constantine 6/5/19 at 33:50.

⁸⁸ E.g., CONSTANTINE 001539-001542; CONSTANTINE 001381; CONSTANTINE 001564; CONSTANTINE 001845-001853.

⁸⁹ Meinert 5/16/19B at 43:05.

⁹⁰ E.g., CONSTANTINE 001365, 001367 (Meinert suggested Executive Office involvement with City Center Initiative Advisory Group); CONSTANTINE 001378 (Meinert email exchange with Constantine concerning small business awards); CONSTANTINE 001388-90 (Meinert introduced Constantine to head of Live Nation Northwest Office); CONSTANTINE 001493-001496 (Meinert secured tickets to a 2013 Marymoor Park concert of a band Meinert managed); CONSTANTINE 001415-001418 (emails regarding 2014 event booked at Marymoor Park); CONSTANTINE 000313-000327 (Meinert and Thomas reserved 2016 concert tickets for Constantine); CONSTANTINE 001341, 001344 (Meinert invited Constantine to watch Seattle Seahawks games at Meinert's restaurant with Charles and others); CONSTANTINE 000275, 000368 (Meinert and Constantine met at Meinert's 5 Point restaurant); CONSTANTINE 001630-001639 (Meinert contacted Constantine about a food delivery company using his restaurant); Meinert 5/16/19B at 02:01:27 and Smith 5/21/19 at 01:03:33 (Meinert joined Constantine's table at a Washington, DC event recognizing Constantine as one of Governing magazine's 2016 Public Officials of the Year); OMSBUDS 493-497 (2010 Seattle Times item including characterization of Constantine/Meinert relationship).

⁹¹ True 5/31/19 at 26:09.

⁹² Kochan 6/25/19 at 30:07.

⁹³ True 5/31/19 at 26:09.

⁹⁴ *Id.* at 25:22.

⁹⁵ *Id.* at 24:26.

indicated there was no further relationship.⁹⁶ Kochan said he may have met Burns (like True) at some point, but that his main point of contact at the County was Emerson.⁹⁷ Burns said he met Thomas once in 2016, and said they had no further relationship.⁹⁸ Burns said he met Charles in February 2012 and has attended 15 to 20 meetings with him, last seeing him in 2016, and is not friends with him.⁹⁹ Burns said he met Meinert in February 2012, has attended five to seven meetings with him, does not have a relationship with him, and has not spoken with him since meetings in 2016.¹⁰⁰

Burns said that in 2012 and up to the present, he did not and does not know the "exact nature" of connections between Constantine, Meinert, and Charles.¹⁰¹ Burns said Brown told him that Meinert and Charles "drop names all the time, and I just sort of was like, I don't know who they know and don't know; it's kind of irrelevant to me." Burns did not recall True ever mentioning the interactions or relationships between Constantine, Meinert, or Charles.¹⁰²

AEG/SES Communications with County before 2012

Witnesses and Respondents gave differing accounts of AEG and SES communications with the County before 2012, which sometimes corroborated and other times contradicted statements of other witnesses.

Kochan said he had been seeking new opportunities for AEG and understood at some point that TLG's agreement with Parks would expire.¹⁰³ Kochan said he attended a meeting with two other AEG employees (and Dotson) of Parks in 2011, who suggested that AEG submit a proposal if they were interested.¹⁰⁴ The Marymoor Concert Series was a desirable opportunity, Kochan explained, and he was immediately interested and believed AEG could produce it better than TLG.¹⁰⁵ Kochan submitted a proposal for AEG (dated September 30, 2011) to Parks for the Marymoor Park Concerts "if and when those booking rights become available."¹⁰⁶ AEG's proposal offered a three-fold approach: (1) book, produce and market a minimum of 12 shows per season; (2) sell and administer sponsorships; and (3) promote greater use of Marymoor Park and increase the number of paid events. AEG proposed to pay Parks a minimum use fee of either \$120,000 per year or a sum comprised of five percent of ticket sales, five percent of concession sales through a third-party concessionaire, and \$2.50 per ticket sold. AEG would have the exclusive right to

⁹⁶ Burns 6/3/19 at 03:26:14, 43:34.

⁹⁷ Kochan 6/25/19 at 30:07.

⁹⁸ Burns 6/3/19 at 43:34.

⁹⁹ *Id.* at 42:09.

¹⁰⁰ *Id.* at 39:01.

¹⁰¹ *Id.* at 01:17:03.

¹⁰² *Id.* at 03:28:07.

¹⁰³ Kochan 6/25/19 at 06:45, 10:10.

¹⁰⁴ *Id.* at 10:10.

¹⁰⁵ *Id.* at 11:42.

¹⁰⁶ BURNS 500. Dotson believed the proposal was a draft. Dotson 6/13/19 at 23:33, 24:11.

obtain sponsors and keep 100% of those revenues.¹⁰⁷ Kochan submitted the proposal in order to show "what [AEG] could do" in the event TLG's agreement was not renewed at the end of the 2012 concert series.¹⁰⁸

Charles said that Dotson approached him and Meinert in 2011 about becoming the Marymoor Park Concerts promoters because TLG was not performing well and that Parks might end the TLG contract early. Charles and Meinert toured the Park but told Dotson they were not interested because the concert series was not viable ("it was a dud, like no one wanted to take it over").¹⁰⁹ Charles said Dotson kept checking back to see if there was any interest, asking what it would take for Charles and Meinert to develop the venue's potential. Charles suggested that Parks should involve a much larger player (AEG), but Dotson said that he had already done that and been turned down by Kochan, who said the concert series was in disarray and would take too much work.¹¹⁰ Charles said Dotson kept "coming back around trying to be the economic development guy, and he's like, what would it take to do something with you?" Charles and Meinert told Dotson they would need to have AEG's involvement and to have the many factors that stood in the way of a successful concert series improved. When Dotson encouraged SES to begin that process with Parks, they met with Kochan, the Washington State Liquor and Cannabis Board (WSLCB), and beer companies to begin assembling a viable package.¹¹¹

Meinert said Constantine told him that Marymoor Park Concerts were underperforming, that he was interested in finding a new promoter-concessionaire team, and wondered if concert promoters would be interested in a different proposal process. Constantine or other County representatives also spoke with others in the concert community, including AEG and Seattle Theater Group.¹¹² After conferring with Charles, Meinert said they decided they did not want to become concert promoters in part because Meinert had just begun managing a band (the Lumineers) that saw quick and major success; Meinert owned, was opening or buying seven other businesses at the time; and Meinert and Charles were exiting their involvement with the Capitol Hill Block Party. While Meinert thought Marymoor Park Concerts could be better, he did not want to be involved with either the concert or concessions side of it. Meinert was also concerned about profitability compared to his other businesses and perceived that the concert series was underperforming.¹¹³ Sometime after the September 2011 AEG proposal, Meinert said Constantine approached him again indicating that the County was considering whether to issue a request for proposals and whether Meinert would be interested. Meinert thus contacted AEG and developed the partnership idea that resulted in Parks' first agreement with AEG and SES.¹¹⁴

¹⁰⁷ BURNS 492-500.

¹⁰⁸ Kochan 6/25/19 at 33:26.

¹⁰⁹ Charles 5/22/19 at 35:20.

¹¹⁰ *Id.* at 34:11, 36:09.

¹¹¹ *Id.* at 39:30.

¹¹² Meinert 5/16/19A at 29:27.

¹¹³ *Id.* at 35:20.

¹¹⁴ *Id.* at 36:30.

Dotson said that Kochan and another AEG representative asked to have lunch in 2011 with Dotson and his supervisor, Emerson,¹¹⁵ and that AEG was looking for growth opportunities including outdoor venues.¹¹⁶ AEG advised that the concert series was desirable for them, asked when the existing agreement would expire, and that AEG would like to submit a proposal.¹¹⁷ Dotson separately reached out to Meinert because the two had met when Dotson worked at One Reel Entertainment in Seattle while Meinert had a consulting contract there. Dotson, Emerson, Charles and Meinert met at Marymoor Park in late summer or early fall of 2011 because, as part of Dotson's job duties, Dotson had been reaching out to marketing and production firms to explore new event opportunities at Marymoor Park other than the concert series.¹¹⁸ The discussion included Meinert's idea to move the Capitol Hill Block Party to Marymoor as a separate event from the concert series, and discussion about SES interest in managing Clise Mansion.¹¹⁹ Dotson denied that he brought up to Kochan, Meinert, or Charles the possibility that Parks might not honor the remainder of its agreement with TLG.¹²⁰

Emerson's recollections of the 2011 meeting at Marymoor Park generally track Dotson's but she did not recall specifics of the discussion beyond Meinert mentioning contact with Constantine.¹²¹ Emerson agreed TLG had not been performing well, recalled meeting with TLG about those concerns, and may have looked at early termination of the TLG agreement but was unaware of anyone other than Parks working on that.¹²²

Burns recalled that AEG had "expressed interest in and had submitted a formal proposal to Parks for a concert series in September 2011 at Parks' invitation."¹²³

Vision for Marymoor Park and Concert Series

Constantine described his vision for Marymoor Park as a multi-use space serving many constituencies and used by many people in ways that burnish the County's brand and generate positive associations with the Park and the County.¹²⁴ The park should be "the premier place in our region."¹²⁵ He has described this vision to many people, including DNRP, but did not recall whether he expressed it to Brown when he was Director of Parks.¹²⁶

¹¹⁵ Dotson 6/13/19 at 01:45.

¹¹⁶ *Id.* at 09:12, 11:54.

¹¹⁷ Dotson 12/21/18 at 26:55, 28:38.

¹¹⁸ Dotson Email to Stier 6/14/19.

¹¹⁹ *Id.* at 11:54, 16:51, 17:13. Dotson email to Stier, June 14, 2019.

¹²⁰ Dotson 6/13/19 at 20:10.

¹²¹ Emerson 1/23/19 at 47:38.

¹²² *Id.* at 22:37, 23:16.

¹²³ Burns Response at 3.

¹²⁴ Constantine 6/5/19 at 19:04.

¹²⁵ *Id.* at 21:49.

¹²⁶ *Id.* at 25:47.

Early in his tenure as Executive, Constantine expressed to his staff the idea of a multi-day festival at the Park to showcase County-grown food, beverages, and music in ways that would augment the historic County Fair in Enumclaw and be a summer draw for families.¹²⁷ Constantine said, however, that his vision has not been fully realized. Though he “pretty clearly” expressed the vision to his staff and DNRP, he said, the plan brought to him was a much mellower, more modest event that ended up as the “CHOMP!” festival dedicated to local foods, sustainability, and music, which Constantine described as a “lovely, but modest” festival that “doesn’t really throw the doors open to all things King County.” Constantine still hopes the festival he originally envisioned can be realized, with hot air balloons possibly, pony rides, or other amusements that would “get kids ask to their parents to bring them to the fair.”¹²⁸ But, he said, there was a culture clash or resistance within the county bureaucracy to doing “something big”, and “ultimately breaking through that bureaucratic inertia was more than I had the time or energy to do because I have a big county to run.”¹²⁹

Sung Yang (Yang), Constantine's then-Chief of Staff and Deputy Executive, said that "vision is too strong a word" for Constantine's ambitions for the park.¹³⁰ Yang said Constantine wanted Marymoor to be a great venue as well as a park, but "it wasn't like he had like this grand plan."¹³¹ Yang said he never had an explicit conversation with Constantine about it,¹³² but recalls Constantine telling him that Meinert and Charles "might have some ideas and we should talk to them ... so I recall there was a meeting" but he didn't know when it occurred.¹³³

DNRP Department Director True said Constantine "just in general really thought that we could do more with Marymoor as a whole, that we could attract more activity and generate more revenue from Marymoor, I think in concerts, but also there was an idea of trying to move the King County Fair that's been in Enumclaw to Marymoor; so in general, those kinds of discussions"¹³⁴ True did not specifically recall how Constantine's vision was communicated to her other than in "casual conversations", including times when she laid out maps of the park for him and his staff to show the locations of Park features.¹³⁵ True did not describe how direction was provided to County leadership beyond an "interest[] in us looking at what the various opportunities were ... and being open to them and growing them ... there was a concern about Lakeside [TLG] ... just in general not really bringing in the kind of events to Marymoor that we

¹²⁷ *Id.* at 20:38.

¹²⁸ *Id.* at 21:49, 24:35.

¹²⁹ *Id.* at 23:40.

¹³⁰ Yang 5/29/19 at 33:57.

¹³¹ *Id.* at 33:57, 34:29.

¹³² *Id.* at 34:47.

¹³³ *Id.* at 37:04.

¹³⁴ True 5/31/19 at 14:06.

¹³⁵ *Id.* at 15:50.

wanted."¹³⁶ True was unaware of any direction from Constantine or his office about preferred ways to use Clise Mansion, other than maintaining its landmark status.¹³⁷

DNRP Deputy Director Burns said that Yang spoke to him "on multiple occasions about, we need to be a little ... bolder and more entrepreneurial ... hey, why can't Marymoor pay for itself? It's the kind of place that you can drive revenue."¹³⁸ Those conversations occurred in Spring 2012 stemming from a recognition at DNRP and the Executive's office that the concert series was underperforming.¹³⁹ "It wasn't a sort of, here's a three-ring binder vision; it was more dialogue."¹⁴⁰

Meinert did not recall Constantine reaching out to him and Charles with a vision for Marymoor, but rather to ask whether the Marymoor Park concerts were truly underperforming and whether the series could be done better.¹⁴¹ Meinert's and Charles' thoughts were "to increase the number of shows, to get more popular shows that sold more tickets and to create a food and beverage area that was more attractive," and to improve the venue with better bands, production, and marketing.¹⁴² When discussing the increased popularity of the Marymoor Park Concerts after AEG began promoting the series, Meinert said "I would suggest it is [now] the most popular concert series in the region of this size; and so what I see is that, you know, Dow had a vision, it did something good, Parks picked the right promoter, and it worked."¹⁴³

January 31, 2012 Gathering at Local 360 Café & Bar

Most witnesses recalled a gathering that occurred in early January 2012 at Local 360 Café & Bar (Local 360), a restaurant owned by Charles. The witness recollections of the event varied as to the attendees, purpose, topics discussed and outcomes of the gathering, and are summarized below.

Brown stated that on January 31, 2012, Constantine sent a text message asking Brown to contact him about Marymoor Park, the first time he had received a direct email, voicemail, or text from Constantine. He called Constantine, who asked him to attend a meeting at Local 360 that night regarding the concert series and concessions at Marymoor.¹⁴⁴ Brown is unclear as to how much

¹³⁶ *Id.* at 17:05.

¹³⁷ *Id.* at 02:11:03.

¹³⁸ Burns 6-3-19 at 29:25.

¹³⁹ *Id.* at 30:13.

¹⁴⁰ *Id.* at 31:04.

¹⁴¹ Meinert 5/16/19A at 55:46, 56:23.

¹⁴² *Id.* at 54:13.

¹⁴³ Meinert 5/16/19B at 02:15:53.

¹⁴⁴ OMSBUDS 037; Brown Follow-Up Answers at 1. Brown said Constantine told him the concert series and concessions were the subject, but Brown also said he was not made aware of the topic before the meeting. *Id.*; OMSBUDS 545 (January 31, 2012 email from Brown to Yang with subject "got message thru Bob" and stating "I was planning on being at Local 360 at 7:00").

of the subject he was told ahead of time. The gathering included Constantine, Yang, Charles, Meinert, Kochan, and Dotson (who Brown asked to attend with him).¹⁴⁵ Brown did not know Charles and Meinert, who introduced themselves as "good friends" of Constantine.¹⁴⁶ Brown described the discussion this way:

As Dow was late, Sung Yang started the meeting by stating that Dave had contacted Dow regarding their interest in becoming the next concert series promoter and concessionaire at Marymoor. Dave then spoke about how it was his observation and those in the industry, that the concert series at Marymoor was poorly managed. He introduced Alex Kochan of AEG, and they spoke of how they could improve the concert series at Marymoor. When Dow arrived, his focus was on what we could do now.¹⁴⁷

Brown said Yang asked him about the length and terms of the current concert agreement and about TLG's performance. Constantine asked whether TLG had breached any terms of the agreement; Brown replied that he was not familiar enough with the terms to answer at that time.¹⁴⁸ Constantine asked him and Yang to review the concert series agreement and determine if TLG was in breach and whether the agreement could therefore be terminated for nonperformance. Brown concluded that "King County would then contract with AEG for a concert series and Dave/Marcus would provide concession services."¹⁴⁹

Constantine's June 2018 written response to Brown's Complaint states that he thought a conversation between him and Meinert about a new version of a King County Fair at Marymoor Park "may have led to" the Local 360 gathering.¹⁵⁰ In his June 2019 Ombuds interview, Constantine recalled initiating the idea for and attending a dinner during the general time frame of Brown's allegation, and that the reason it was held at Local 360 was that Charles owned the restaurant.¹⁵¹ The purpose of the gathering was "to introduce SES and AEG to Parks in order to facilitate communications" regarding the concert series, with a goal of increasing concert revenue to support Parks because "AEG and SES had asserted that the County was earning less than it should from the concert series."¹⁵² Constantine knew who Brown was and recognized him from County meetings but had little previous one-on-one contact with him; Constantine did not specifically recall Brown in attendance but did recall that a Parks representative was present.¹⁵³

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ OMSBUDS 037; Brown Follow-Up Answers at 2.

¹⁴⁹ *Id.*

¹⁵⁰ Constantine Response at 2.

¹⁵¹ Constantine Response at 2; Constantine 6/5/19 at 38:59 ("I was involved at least starting the ball rolling.")

¹⁵² Constantine Response at 2; See Constantine 6/5/19 at 39:21. Constantine did not recall hearing about deficiencies with the concert series from people other than Charles and Meinert. Constantine 6/5/19 at 37:06.

¹⁵³ Constantine 6/5/19 at 40:10. In a letter to the Ombuds Office dated July 1, 2019, counsel for the Respondents asserted parenthetically that Brown was included at the January 31, 2012 gathering "in place of" True and Burns.

Constantine said his role was mostly to listen. He recalled "people from outside County government telling us that we have a really nice venue that could be making more money and hosting better concerts."¹⁵⁴ He did not remember whether there was discussion about AEG and SES interest in the concert series, or the TLG contract and its status.¹⁵⁵ He did not remember anyone saying Meinert had contacted him about an interest in being a Marymoor Park Concerts promoter or concessionaire.¹⁵⁶ Constantine did not recall directing that efforts be taken to determine whether TLG was in breach of its contract. Constantine did not recall specific directives to anyone at the conclusion of the gathering,¹⁵⁷ and denied directing that TLG be found in breach.¹⁵⁸ Other than statements about wanting Marymoor Park Concerts to be a successful series, he did not think he gave specific directions or specified any tasks to be performed; nor did he recall tasks assigned by others at the gathering.¹⁵⁹

Dotson recalled Brown asking him to go to the Local 360 gathering during early 2012 and that Brown had first asked Emerson to come but was unavailable.¹⁶⁰ Brown told Dotson that Kochan wanted to meet with them.¹⁶¹ Dotson and Brown entered the restaurant together, and Dotson noticed Yang (who he had not previously met) standing at the greeter's kiosk.¹⁶² Charles greeted them and escorted them to a private room where they sat at a table with Constantine, Yang, Charles, Kochan, and Meinert.¹⁶³ Dotson was surprised that Constantine and Yang were present and that the gathering took place where it did, but he was also a relatively new Parks employee attending in place of his supervisor, so he "was kind of rolling with it."¹⁶⁴ There was a "general vibe" in the room concerning what Dotson felt "was some sort of relationship there ... there wasn't like introductions—for example, Dow didn't like introduce himself to Dave Meinert ... in my mind it was like people, they all knew each other from some capacity."¹⁶⁵ Kochan shared that AEG and SES had formed a partnership (which Dotson had not previously known) and wanted to share a proposal. They handed out copies¹⁶⁶ and Dotson and Brown listened to Kochan lead the conversation, describing specific proposals for AEG, SES, and the County.¹⁶⁷ Meinert or Charles

Letter from Susan Slonecker and Paul Lawrence to Amy Calderwood and Jon Stier, July 1, 2019, at 2. Counsel for the Respondents later acknowledged that the record does not support that parenthetical statement. Slonecker email to Stier, July 15, 2019.

¹⁵⁴ Constantine 6/5/19 at 43:32.

¹⁵⁵ *Id.* at 44:54.

¹⁵⁶ *Id.* at 46:46.

¹⁵⁷ *Id.* at 50:03.

¹⁵⁸ Constantine Response at 2, 6.

¹⁵⁹ Constantine 6/5/19 at 50:03.

¹⁶⁰ Dotson 12/21/19 at 22:00, 23:38.

¹⁶¹ *Id.* at 24:50.

¹⁶² *Id.* at 32:48, 33:54.

¹⁶³ *Id.* at 33:53, 35:55.

¹⁶⁴ *Id.* at 47:45, 01:09:07 .

¹⁶⁵ *Id.* at 01:10:59, 01:12:03.

¹⁶⁶ *Id.* at 37:32, 38:35; BURNS 131-147.

¹⁶⁷ *Id.* at 39:45, 45:03.

explained what SES's contribution to the partnership would be.¹⁶⁸ Dotson and Brown were asked about the length of TLG's agreement with Parks and someone brought up the number of shows TLG was producing. Dotson did not recall if the current state of the concert series itself was discussed, though he knew AEG was aware of it; Dotson did recall someone (he does not recall who) discussing the possibility of TLG being in breach of contract and that TLG's agreement could possibly be terminated for nonperformance.¹⁶⁹ Dotson says Yang contributed to the conversation but could not remember specifics.¹⁷⁰ He remembered Constantine sharing the importance of the concert series to Parks and to the County, and that he is a music fan.¹⁷¹ Dotson did not recall Yang saying that Meinert had contacted Constantine about the AEG/SES partnership interest in being the next Marymoor concert promoter and concessionaire.¹⁷² He said that after Kochan, Meinert, and Charles finished speaking, he and Brown thanked them for sharing their proposal, and the gathering broke up soon afterward.¹⁷³ Dotson left with the understanding that AEG had formed a partnership with SES and that they were interested in producing the Marymoor Park Concerts.¹⁷⁴

Emerson confirmed that Brown asked her to attend the Local 360 gathering, that she was unavailable, and that Dotson attended in her place. She recalled receiving a brief phone call from Dotson after the gathering, which was not unusual because he was then a recent hire and had a habit of calling her after meetings.¹⁷⁵ She heard that the meeting was about AEG and SES doing a joint proposal, "sort of throwing their idea out there about what they want to do at Marymoor Park."¹⁷⁶ Emerson was not aware of discussions at the Local 360 gathering concerning an idea to find TLG in breach of its agreement or to replace TLG with AEG and SES for the remaining year of the agreement.¹⁷⁷

Yang generally recalled the Local 360 gathering but not whose idea it was or how it came about. He thought the other attendees may have been Charles, Meinert, Brown, Constantine, and Burns.¹⁷⁸ It was not unusual to schedule a meeting regarding County business off of County property and outside normal business hours.¹⁷⁹ He did not recall having conversations ahead of time with County staff about the gathering.¹⁸⁰ Yang said the purpose of the meeting was to

¹⁶⁸ *Id.* at 45:31.

¹⁶⁹ *Id.* at 42:19, 44:37, 53:24, 54:38, 01:00:34, 01:04:33.

¹⁷⁰ *Id.* at 47:01.

¹⁷¹ *Id.* at 59:44.

¹⁷² *Id.* at 52:16.

¹⁷³ *Id.* at 57:41.

¹⁷⁴ *Id.* at 01:05:40.

¹⁷⁵ Emerson 1/23/19 at 14:02, 15:52, 17:09.

¹⁷⁶ *Id.* at 19:21.

¹⁷⁷ *Id.* at 25:44.

¹⁷⁸ Yang 5/29/19 at 50:30, 52:01. Burns denied attending the Local 360 gathering. Burns 6/3/19 at 43:40. No other witnesses recalled Burns being in attendance.

¹⁷⁹ Yang 5/29/19 at 52:37.

¹⁸⁰ *Id.* at 56:58.

discuss how to improve the quality of music services at Marymoor Park and whether there were other ideas for utilizing the asset.¹⁸¹ He did not recall whether he told the attendees that Meinert had contacted Constantine about his partnership interest in being the next Marymoor promoter and concessionaire.¹⁸² Yang said he would have asked about TLG's agreement with the County, TLG's performance, and whether TLG was out of compliance or in breach.¹⁸³ He thought he said to someone that they should contact the Prosecuting Attorney's Office about "what they think" and whether there is "a basis to terminate the contact."¹⁸⁴ Yang denied that the idea was that if TLG could be found in breach of its agreement that it would be terminated and AEG/SES could replace them and improve the concert series, saying "just handpicking a contractor is obviously highly inappropriate if not a violation."¹⁸⁵ He denied that anyone at the gathering said or implied that AEG and SES should or would take over the concert series and concessions.¹⁸⁶ He said the information conveyed during the gathering was "just inputs into ... what should we do next with Marymoor."¹⁸⁷

Charles recalled the Local 360 gathering being about "how we can make Clise Mansion actually work and the catering styles that you need and the sustainable message that we will be bringing if we had Local 360 brand Clise Mansion."¹⁸⁸ Charles testified, "I don't know how it got organized, but you know, I'm meeting people and doing deals and, and having a conversation at high levels."¹⁸⁹ He did not recall discussion at Local 360 about the TLG agreement or its performance,¹⁹⁰ and said "the very first time we met [Dotson]" he discussed ending TLG's agreement with Parks early, before the first time that Charles said he and Meinert declined to pursue the concert series.¹⁹¹ Charles did not recall whether there was discussion at the gathering about an approach for removing TLG and installing AEG/SES in its place.¹⁹²

Meinert has no recollection of an early-2012 gathering at Local 360 with the participants mentioned above, but allowed the possibility that it occurred since he has met with Constantine, Yang, Kochan, Brown and Dotson several times over the years.¹⁹³

¹⁸¹ *Id.* at 57:46.

¹⁸² *Id.* at 58:49.

¹⁸³ *Id.* at 59:15.

¹⁸⁴ *Id.* at 59:42.

¹⁸⁵ *Id.* at 01:01:14.

¹⁸⁶ *Id.* at 01:02:37.

¹⁸⁷ *Id.* at 01:05:35

¹⁸⁸ Charles 5/22/19 at 01:01:33.

¹⁸⁹ *Id.* at 01:02:06.

¹⁹⁰ *Id.* at 01:03:22.

¹⁹¹ *Id.* at 01:03:41.

¹⁹² *Id.* at 01:06:29.

¹⁹³ Meinert 5/16/19A at 41:09, 41:26, 42:00.

Kochan recalled numerous lunch meetings with Charles and Meinert to assemble their joint proposal to Parks, but said he had no recollection of the Local 360 gathering.¹⁹⁴

Activity Following Local 360 Gathering

Brown summarized the immediate follow up to the Local 360 gathering in this way:

This was a priority item over the next several days with frequent check in from Sung Yang on what progress we were making. Sung Yang updated Bob Burns, my boss, and he was also included in the discussion. We were directed by Sung not to put any content with respect to this issue in email, and any documents would be draft. During this time I was primarily working with my Department Deputy Director Bob Burns as a conduit to the Executive's office. I expressed concerns about what was taking place – trying to terminate a contract and replace with friends of the Executive. I strongly conveyed to Bob that I felt it was unethical and crossed the line and gently pushed back. Bob agreed that it sure did not look good, but that we should proceed cautiously.¹⁹⁵

Burns recalled Brown describing the Local 360 gathering to him after it happened, to the effect that "there was a meeting, you don't know about it", that it was "awkward", that persons involved were "a little pushy", and that Brown expressed concerns about ending the TLG agreement early.¹⁹⁶ Burns felt a need to be careful and await the legal analysis.¹⁹⁷

Burns did not recall discussing the gathering with Yang, but remembered Yang saying "not to speculate over email" about whether TLG might be in breach of its contract.¹⁹⁸ Yang did not specifically recall whether he gave that instruction, but felt confident that he would not have done so.¹⁹⁹ Neither Emerson nor Dotson recalled receiving or hearing about an instruction not to write things down about the status of TLG's agreement or the AEG/SES proposal.²⁰⁰

In a February 8, 2012 three-page legal memorandum addressed to Yang, the Prosecuting Attorney's Office wrote "The option of termination is available under the contract, however, there may be risks associated with that course of action" due to a potentially ambiguous term that a court could or might construe against the County, resulting in litigation over the termination.²⁰¹ The next evening, February 9, 2012, Yang sent Constantine a pdf copy of the TLG

¹⁹⁴ Kochan 6/25/19 at 50:27.

¹⁹⁵ OMSBUDS 037-038.

¹⁹⁶ Burns 6/3/19 at 52:04.

¹⁹⁷ *Id.* at 01:02:10.

¹⁹⁸ *Id.* at 53:00, 01:05:23.

¹⁹⁹ Yang 5/29/19 at 01:09:19, 01:09:58; 01:10:44.

²⁰⁰ Emerson 1/23/19 at 27:10; Dotson 12/21/19 at 01:26:13.

²⁰¹ BURNS 038-040 (no "draft" marking); OMSBUDS at 552 (first page of legal memorandum, watermarked "DRAFT").

agreement and his assessment that the agreement was "very poorly written."²⁰² Later that evening, Yang sent Constantine a longer update that said in part:

It sounds like Meinert's highest priority is to secure the long term contract with Parks to have events and concerts starting in 2013. I will get a better sense for this in a 10:00 am phone call tomorrow with Meinert and Alex. They'll tell us whether AEG believes it can secure [travelling music festival] Warped this year and, if not, what else they would do on August 4.²⁰³

After discussing various scenarios and specific terms of the TLG agreement (which included TLG's affiliate Live Nation), Yang concluded his Marymoor update as follows:

I guess the question for us is whether we want to give exclusive dates to AEG this year and risk a legal confrontation with Livenation. We also may not get the Warped tour regardless of whether we give exclusive dates to AEG. On the other hand, Livenation has clearly not upheld their end of the bargain. Unless you have feedback about this, I will follow up with you tomorrow after talking with Meinert. I also have legal memo draft per our earlier conversation. Idea is to get done for your return to office.²⁰⁴

Yang stated he did not know whether the decision of how to proceed with the TLG agreement was in the hands of the Executive's Office or Parks, but that they "were both working on it together." In such situations, Yang said he would begin with the department involved, defer to their expertise, listen, and give guidance based on their feedback.²⁰⁵ True said "we were all involved" in the decision but that "potentially the Executive could be the final decisionmaker."²⁰⁶ King County did not terminate the TLG agreement early.

Burns stated that in February/March 2012, AEG and SES jointly approached the County about the Marymoor Park Concerts and other potential events at Marymoor Park, and that Yang arranged "a couple of meetings" between himself, Yang, Burns, and AEG/SES representatives.²⁰⁷ Brown denied attending any meetings that included all of those participants from 2012 through 2015 based on his recollections and review of his calendar. Brown also stated he was not aware of such meetings, but said it was possible that Burns and Yang separately met with AEG and SES.²⁰⁸ Burns stated that he and Yang did steer AEG and SES to the Big Ideas proposal process in

²⁰² CONSTANTINE 000015.

²⁰³ *Id.* at 000204.

²⁰⁴ *Id.*

²⁰⁵ Yang 5/29/19 at 01:16:29.

²⁰⁶ True 5/31/19 at 42:18.

²⁰⁷ Burns Response at 3.

²⁰⁸ Brown Answer to Burns Response at 1.

February/March 2012, and told them to submit a proposal if they were interested in becoming the next promoter and concessionaire.²⁰⁹

Brown stated to the Ombuds that Parks "made very clear" to the Executive's Office in early 2012 that it did not want to receive concert and concessionaire proposals through the Big Ideas process, but rather through a competitive public RFP process.²¹⁰ However, in support of that assertion, Brown provided only an undated three-page draft document, titled "Proposal to King County Parks", which states that "Last night King County Parks received a proposal from a potential partner to exclusively produce/book the concert series, King County Fair, large-scale events and general events at Marymoor." In a "Recommendation" column on the first page, the document states "2012 – Status quo" and "2013 – Open RFP for competitive bid."²¹¹ Under a separate "Parks recommendation" heading at the end of the third page, the document states "Pursue new partnership in 2013 and beyond."

Brown stated that shortly after the Prosecuting Attorney's Office produced its memorandum on breach and termination of the TLG agreement, Yang directed Brown to tell his staff that Parks would not be developing a competitive RFP using the standard process managed by the Procurement Section within the County's Finance and Business Operations Division (FBOD).²¹² Instead, Brown said Parks was to use the Big Ideas process, which he characterized as "a little known tool."²¹³ Yang did not recall what proposal process was used, or whether there was any direction provided to Parks about using Big Ideas.²¹⁴ Dotson recalled that AEG/SES used Big Ideas for their 2012 Marymoor contracting proposal due to the Local 360 gathering and their knowledge of that portal.²¹⁵ However, Emerson recalled that Parks had planned to use Big Ideas but she did not recall whether she had understood there was to be a choice between using that portal or the more formal competitive procurement system. Emerson was not aware of Parks being directed or urged to use Big Ideas by senior County officials.²¹⁶

AEG/SES Joint Proposal Submission to Parks

Kochan testified that he initially developed a relationship with Meinert through his interest in booking an AEG-supported national tour for The Lumineers, a band Meinert managed.²¹⁷ When Kochan later approached Meinert in 2010 or 2011 to discuss a joint proposal for Marymoor concerts, Kochan said Meinert indicated he had submitted a proposal regarding Marymoor the

²⁰⁹ Burns Response at 3.

²¹⁰ Brown Answer to Burns Response at 1.

²¹¹ OMSBUDS 048-050.

²¹² OMSBUDS 038; Brown Follow-Up Answers at 4.

²¹³ Brown Follow-Up Answers at 4.

²¹⁴ Yang 5/29/19 at 01:36:20, 01:37:19.

²¹⁵ Dotson 12/21/18 at 01:22:03.

²¹⁶ Emerson 1/23/19 at 36:48.

²¹⁷ Kochan 6/25/19 at 23:05.

year before, but he didn't get the business.²¹⁸ Kochan's recollection is that it was his idea for AEG and SES to prepare a joint proposal, and that he "wrote the proposal" with SES providing pieces regarding the work they had agreed SES would perform and adding graphics prior to the joint proposal's submission to the County.²¹⁹ When asked if he knew whether Meinert had any relationships with key people at King County, including Constantine, Kochan answered that he assumed Meinert had knowledge of those people due to his involvement in the market, but that he did not recall Meinert indicating his relationship with Constantine or others would be a factor that would help the joint proposal. Further, Kochan stated that even if Meinert had made such a statement, "I don't know that I would have believed that anyway if he said it."²²⁰ Kochan testified that he "just assumed that the course of proposing was the same thing that we did with Dotson and Emerson, and now I would make a stronger proposal because .. we had a concession piece and ... part of the deal was reviving ... a historic building and upgrading everything that had to do with food and beverage."²²¹

Meinert submitted the AEG/SES joint Marymoor Park proposal for a five-year term by email directly to Brown on March 26, 2012.²²² Brown believed the email "stated they expected us to quickly award them the new contract."²²³ The relevant sentence in Meinert's email reads "We'd love to get a contract finished quickly to allow us to start on the 2013 planning."²²⁴

The submission to Parks proposed that AEG guarantee a minimum of twelve shows with a goal of up to twenty; sell sponsorships with SES and Parks; promote Marymoor Park to attract other events like large-scale outdoor festivals; develop a new nationally-recognized festival "akin to Coachella or New Orleans Jazz Fest"; and bring corporate special events to the amphitheater. SES pledged to manage Clise Mansion booking, catering, and events "utilizing a sustainable mission similar to our restaurant Local 360"; become the sole Marymoor Park state liquor licensee; develop and use produce for Clise Mansion events from the Willowmoor Farmstead garden in Marymoor Park; develop additional programming for Willowmoor Farmstead and Clise Mansion; and work with AEG, Parks and others to develop "a reimagined" or "future King County Fair."²²⁵

Key terms offered by AEG in the joint proposal included the greater of a minimum annual "use fee" of \$120,000 for the concert venue, or 5% gross ticket sales and artist merchandise sales plus \$2.50 per ticket sold. Key terms offered by SES in the joint proposal included SES payment of the leasehold excise tax of 12.84%; payment to King County of 10% gross concession sales, 42% gross

²¹⁸ *Id.* at 42:18-43:32. Kochan later stated, in response to a clarifying question, "I don't know that [Meinert] said "submitted" [a proposal for Marymoor concessions]. He said he tried to get it."

²¹⁹ *Id.* at 51:50.

²²⁰ *Id.* at 48:37.

²²¹ *Id.* at 48:37.

²²² OMSBUDS 553.

²²³ OMSBUDS 047.

²²⁴ OMSBUDS 553.

²²⁵ BURNS 131-147.

rental receipts for Clise Mansion, and 20% of "partnering services receipts." AEG and SES further proposed that they and Parks would collaborate to obtain and implement concert series sponsorships with revenue divided equally three ways after a 20% finders fee paid to the partner that secured the sponsorship.²²⁶ The proposal noted that SES was willing to "invest capital in Clise Mansion" for a new kitchen and updated restrooms," and said they were "well connected and politically active" and "willing to partner on parks [sic] levee campaigns."²²⁷

AEG/SES proposed County responsibilities for maintenance and repair of the concert venue and Clise Mansion (to the standard of a "first class facility in the United States"); work with SES to provide reasonable infrastructure to operate concessions; and perform structural maintenance and capital improvements to Clise Mansion."²²⁸ The joint proposal contemplated that AEG and SES would negotiate separate agreements with the County that would run concurrently with the other, apparently owing to the commitments offered by SES regarding management and operation of Clise Mansion which would not have directly involved AEG.²²⁹

Monqui Presents' Proposal Submission to Parks

Portland, Oregon, based Monqui Presents (Monqui) is a live-music promoter and production company,²³⁰ and one of five such firms that may have had the capacity to produce the Marymoor Park Concerts in 2012 and 2013 (the others were AEG, Live Nation, One Reel, and Seattle Theater Group).²³¹ During and before 2012, Monqui contacted Parks to share its interest in the concert series and to ask about the expiration of TLG's agreement. Parks occasionally reached out to Monqui about the concert series.²³² Brown stated that Monqui called Parks to inquire about the concert series in roughly the same time frame that Parks received the AEG/SES proposal.²³³ Parks had informed Monqui of the opportunity to manage and operate Clise Mansion,²³⁴ but Parks did not specifically ask Monqui to respond to the Clise Mansion opportunity as part of the 2012 proposal process, and Monqui did not know what weight Parks might accord to the quality, depth or details of proposed Clise Mansion terms.²³⁵

²²⁶ Kochan testified that there is no industry standard for sponsorship terms, but rather "what do you need to do in order to make the deal work?" Kochan 6/25/19 at 01:23:49.

²²⁷ BURNS 135.

²²⁸ BURNS 135, 141-143.

²²⁹ OMSBUDS 026. Parks' agreement with TLG, as well as the 2011 AEG and 2012 Monqui proposals all included terms allowing the concert promoter to sell food and beverage concessions itself or through a subcontractor.

²³⁰ <http://www.monqui.com/> (last accessed June 23, 2019).

²³¹ Dotson 6/13/19 at 04:40; Charles said no local promoter had capacity to produce the Marymoor Park Concerts at the scale Parks envisioned. Charles 5/22/19 at 36:09.

²³² Emerson 1/23/19 at 41:48; Dotson 12/21/19 at 28:45; OMSBUDS 038.

²³³ OMSBUDS 038.

²³⁴ Dotson 12/21/18 at 01:49:42.

²³⁵ Emerson 1/23/19 at 01:51:53; Dotson 12/21/18 at 01:50:30.

Brown said that "when [he] informed Bob Burns and Sung Yang that we had another interested party which we wanted to consider, I was directed to tell my staff by Sung Yang to put an artificial ending date in place two weeks out so no additional parties could submit proposals."²³⁶ Yang recalled discussion about what the timeline should be in order to administer the selection process, but he denied directing any aspect of the timeline.²³⁷ Burns said he, Yang, and Brown met to discuss Monqui's interest and Burns thought the two week period suggested by Yang was reasonable because "it was after the timeline in which Kevin was suggesting that the other party was going to submit a proposal."²³⁸ True said that whether a timeline is imposed for Big Ideas proposals varied, but indicated that timelines could be set if appropriate to a specific kind of proposal.²³⁹ A lawyer contacted Parks in late June 2012 seeking an extension of the proposal timeline for a client that wished to participate. Parks denied the request.²⁴⁰

Monqui's proposal, dated May 7, 2012, offered a five-year agreement with the County to produce a minimum of twelve shows up to a maximum of twenty shows. It pledged to the County a \$150,000 annual guarantee from all revenue streams, and a 50/50 split on all venue and series sponsorships, minus a 15-17.5% fee if Monqui were to hire an outside vendor to solicit the sponsorships. Monqui offered 10% of gross ticket sales to the County, as well as 10% of food and beverage concessions that it would sell itself or through a Monqui-contracted concessionaire. Monqui proposed that it have exclusive use of the concert areas during the concert season and that it would have the exclusive right to book national or regional touring acts at Marymoor Park. The proposal included general "venue upgrades" as "topics of discussion" but did not mention Clise Mansion or the development of other events at the park.²⁴¹

Parks' Process and Decision after Receiving Monqui Proposal

On May 21, 2012, Yang called Burns for an update on the selection process. Burns asked Parks to produce a short overview including selection criteria. Emerson summarized the timeline by email, including notification of award by June 15, and July/August for negotiation of the agreement.²⁴² She summarized the selection criteria as follows:

- Revenue for Parks
- Vision for the series (user experience, public perception, aesthetics)
- Event related logistics, tasks, marketing, promotion and labor

²³⁶ OMSBUDS 038; Brown Follow-Up Answers at 5.

²³⁷ Yang 5/29/19 at 01:40:02.

²³⁸ Burns 6/3/19 at 01:19:42

²³⁹ True 5/31/19 at 50:17.

²⁴⁰ OMSBUDS 576. The lawyer said recently he did not recall which of his clients wanted to participate, as it could have been one of several, and said he did not believe Parks' process used in 2012 was fair. Telephone conversation with Allen Draher, June 24, 2019.

²⁴¹ OMSBUDS 116-121.

²⁴² OMSBUDS 123-126.

- Collaborative partnership²⁴³

Yang, Burns, and Brown met before Parks conducted its final review. During that meeting, Burns said that Brown asserted his staff preferred Monqui. Burns perceived this was due to Monqui's smaller size, which he said made them easier to manage. Yang favored a bigger, more entrepreneurial promoter to transform Marymoor into a regional destination.²⁴⁴ According to Burns, when Yang heard Brown's preference Yang "emphasized that the review should also include consideration of AEG's size and reach, potential opportunities for new events with SES, and other intangibles (such as the fact that one of SES's employees managed successful bands)."²⁴⁵ Burns acknowledged that Brown "was directed to ensure that Parks staff included additional factors into the evaluation process," but Burns denied telling Brown or Parks staff "that they should choose AEG/SES over a better qualified candidate."²⁴⁶

Brown's version of the meeting is different, and he stated numerous times that Meinert and Charles were difficult to work with.²⁴⁷ He denies that he stated a preference for Monqui to Yang or Burns at that time, and stated he was "directed before the interviews took place that AEG/SES would be awarded the contract and the justification was the intangibles brought to the table by SES."²⁴⁸ Brown added that "[t]he basis of this contract and interviews was supposed to be about securing a new promoter for the concert venue. It was not about the Clise Mansion or other events in the park."²⁴⁹ Brown stated that Parks' calculations showed "Monqui would have generated more revenue than AEG/SES for Parks within and related to the concert venue," citing a draft "Concert Series Comparison" that Parks produced.²⁵⁰ (As to that, Burns thought the revenue estimates were not "all that clear" based on terms he recalled from the two proposals.²⁵¹)

Dotson recalled that the elements of the AEG/SES proposal related to Clise Mansion, and SES's desire to explore new events there like the sustainability festival and pop-up food truck events, were the deciding factors in Parks decision to select AEG/SES because an analysis Dotson produced showed that concert revenues from the AEG/SES proposal were comparable to those

²⁴³ *Id.*

²⁴⁴ Burns 6/3/19 at 01:33:09. True's testimony was that Brown had indicated Parks staff preferred Monqui because staff felt "Monqui was easier to work with than AEG/SES and that the concert revenue that they proposed sharing with Parks was higher." True Response at 2.

²⁴⁵ Burns Response at 5.

²⁴⁶ *Id.*

²⁴⁷ *E.g.*, OMSBUDS 039; Brown Follow-Up Answers at 7.

²⁴⁸ Brown Answer to Burns Response at 3.

²⁴⁹ Brown Follow-Up Answers at 7.

²⁵⁰ *Id.* at 7 and Attachment; BURNS 885 (slightly varying version of same attachment); Burns Response at 4 (reasons Burns believed the two proposals required additional consideration); Brown Answer to Burns Response at 3 (reasons why Brown ultimately believed Monqui's proposal was superior).

²⁵¹ Burns 6/3/19 at 01:35:56.

Parks had received under its agreement with TLG.²⁵² Dotson did not recall receiving direction from the DNRP Director's Office or Executive's Office about changing or adding scoring criteria.²⁵³ Emerson recalled that SES's pledges about Clise Mansion "put them over the line,"²⁵⁴ and said she was not aware of Burns or Yang adding criteria or new factors to the evaluation of the two proposals.²⁵⁵

At the same meeting concerning factors/criteria for selecting a promoter and concessionaire, Brown said Yang and Burns directed him to be part of the Parks team reviewing the AEG/SES and Monqui proposals. As Parks Director since 2006, Brown claimed he had never before been a part of a bid review process.²⁵⁶ Burns said that he, Yang, and Brown discussed the composition of Parks' proposal review team and that Burns and Yang told Brown he needed to either convey the review criteria the three men had just discussed to Brown's staff, or Brown needed to be a part of the review team.²⁵⁷ Yang denied knowing of any input or communications from the Executive's Office regarding who would be on the review team, although it was possible that Parks told Yang and he no longer recalls.²⁵⁸

Emerson was part of the Parks review process and said she and Dotson compared the two proposals side by side.²⁵⁹ Emerson testified that "... we were very careful just to make sure that we're, I would say neutral in that, but at the same time I did feel like in the back of my head; this is an important customer to the Executive."²⁶⁰ Dotson recalled that he, Brown, Emerson, and Parks contracting expert John Villapudua served on an "informal scoring committee", but also said he did not remember the exact composition of the committee.²⁶¹

Parks selected the AEG/SES proposal. Negotiations began in Summer 2012, the last season of TLG's Marymoor agreement with Parks.²⁶²

Parks Negotiation and Approval of AEG Concert Series Contract

Emerson led the County contract negotiations with AEG through contract execution, with support from the Prosecuting Attorney's Office (PAO).²⁶³ Kochan recalled that he and AEG's lawyers in Los Angeles negotiated with Parks, and said "there were a few things that [Parks] didn't like ...

²⁵² Dotson 12/21/18 at 02:03:29; Dotson 12/24/18 at 04:07, 05:58; BURNS 889.

²⁵³ Dotson 12/21/18 at 01:51:49.

²⁵⁴ Emerson 1/23/19 at 01:26:49.

²⁵⁵ *Id.* at 42:32.

²⁵⁶ OMSBUDS 039; Brown Follow-Up Answers at 7.

²⁵⁷ Burns 6/3/19 at 01:32:57; 01:34:16.

²⁵⁸ Yang 5/29/19 at 01:37:59.

²⁵⁹ Emerson 1/23/19 at 39:03.

²⁶⁰ *Id.* at 44:43.

²⁶¹ Dotson 12/21/18 at 01:44:23.

²⁶² Burns Response at 5.

²⁶³ Emerson 1/23/19 at 01:00:35.

issues with sound, with the neighbors, and so we came up with [the idea of] let's see how it goes and if it's bad we'll spend some money on the next season to ... moderate the noise."²⁶⁴ True recalled that she was not involved in the negotiations but received progress updates from Burns during their normal one-on-one meetings because he was involved.²⁶⁵ Burns did not recall that he was involved at all in the AEG negotiation, other than to answer periodic questions from Emerson.²⁶⁶ Yang generally recalled being involved with or tracking both AEG and SES agreements.²⁶⁷

Brown said the process with AEG was "relatively straightforward with very little negotiation The AEG contract mirrored their proposal. It was not a long negotiation process."²⁶⁸ In materials submitted with his April 11, 2018 Whistleblower Complaint, Brown charged that both AEG and SES sought and received exclusive rights to all of Marymoor Park due to pressure from the Executive's Office; whereas he stated Parks had been clear that the agreements would extend only to the concert venue and Clise Mansion.²⁶⁹ In Brown's quotation above (submitted to the Ombuds on May 30, 2018) he appears to abandon the allegation of pressure from the Executive's Office regarding AEG, though he has maintained it regarding SES.

Brown and Kochan signed the AEG agreement on January 24, 2013.²⁷⁰ The final AEG/Parks agreement grants AEG exclusive rights to any Park event at which live music is a "primary featured event", and grants Parks the right to schedule events where live music is not a "primary or featured attraction."²⁷¹

Parks Negotiation and Approval of SES Concession Contract

True stated that "negotiations with SES became more challenging."²⁷² Yang said County staff were frustrated with SES because they were "heavy-handed" and would "agree to something and then they try to get more."²⁷³ Emerson said:

The whole negotiation was a moving target.... [Dotson] would get off the phone with [Charles], write an email and say, this is what we talked about. We'd put it in the contract. Their lawyers would look at it or they would look at it, and then we would be doing another thing, something completely different. So then we would

²⁶⁴ Kochan 6/25/19 at 01:16:09.

²⁶⁵ True 5/31/19 at 10:46.

²⁶⁶ Burns 6/3/19 at 02:00:10; Burns Response at 5.

²⁶⁷ Yang 5/29/19 at 01:23:38.

²⁶⁸ Brown Answer to Burns Response at 3.

²⁶⁹ OMSBUDS 040.

²⁷⁰ Email attachment from Emerson to Stier, 6/26/19 per request.

²⁷¹ Special Use Agreement between King County Parks and Recreation Division and AEG Live NW, LLC (hereafter "2013 Parks/AEG Agreement"), January 24, 2013, at 2.

²⁷² True Response at 3.

²⁷³ Yang 5/29/19 at 01:54:57, 01:55:03.

change the contract or have another conversation about how that doesn't work for [Parks], how that might not work for [SES].²⁷⁴

After Parks' had awarded both the AEG and SES contracts, Brown said "it became very clear that SES was looking for a different agreement than what they proposed. One issue after another arose."²⁷⁵ Brown stated that:

No less than 50 times did I make my concerns known to my bosses, Christie True and Bob Burns. ... At the end, due to my comments and opposition, I was removed from any negotiations. The final contract was negotiated by Sung Yang and Bob Burns.²⁷⁶

True denies that Brown was removed from the contracting process.²⁷⁷ True testified that her understanding was that Parks staff other than Brown negotiated the SES contract, not Brown, whose involvement she characterized as the "normal role as a Division director, probably being kept appraise[d], but he was not at the negotiation table."²⁷⁸

Burns stated that he was only marginally involved in the SES negotiations from summer 2012 until early-January 2013, when he became more involved after SES complained to Parks and the Executive Office about negotiations stalling and Yang requested that Burns assist in finalizing the deal.²⁷⁹ Burns testified that his understanding was that Dotson was the lead negotiator of the SES contract, not Brown, and though he didn't understand that there was any problem with Brown's involvement in the SES negotiations, he didn't think Brown was that involved in the negotiations until January.²⁸⁰

Burns said his objective at the time was to reach an agreement to protect the County on risk and liability given that negotiations had dragged out for six months and SES had already covered four events without an agreement in place.²⁸¹ Email communications between Burns and True

²⁷⁴ Emerson 1/23/19 at 01:04:01.

²⁷⁵ OMSBUDS at 039.

²⁷⁶ OMSBUDS 780-781; OMSBUDS 040-041 (Brown indicates he was extremely upset when he learned the language he requested "was then dropped when Sung Yang and Bob Burns negotiated the final contract."); Dotson 12/21/19 at 2:00:02 (Dotson states that he thought Parks was "still in negotiation" with SES and "neither Kevin, Jessica, or I or anyone kind of working on and then negotiating this agreement was aware of that or had agreed on the final terms of the agreement.").

²⁷⁷ True Response at 11.

²⁷⁸ True 5/31/19 at 1:33:16; Burns and True provide contradictory testimony here. Burns stated that Dotson was the lead for the SES contract negotiation and True stated that Emerson was the lead. The documentary record indicates that both were involved in the negotiations. See BURNS 222-223 (Burns email to True "I talked to Kevin yesterday about how to help Ryan and Jessica get sharper on contract details.").

²⁷⁹ Burns Response at 6, citing to BURNS 194-221.

²⁸⁰ Burns 6/3/19 at 2:38:42-2:41:21.

²⁸¹ Burns Response at 7.

reference Brown's concerns with AEG and SES as partners but also show Brown's continuing involvement with the SES contract negotiations on January 25, 2013 and note that Burns "told him that's something for him to manage, and steer into something more positive."²⁸² The contract with SES was signed by Brown on January 28, 2013.

When asked whether he was informed that Brown had been removed from the AEG and SES contract negotiations, Yang testified that "No, in fact, I kind of assumed that he was there the whole time helping support ... Bob and myself."²⁸³

The relevant portion of Brown's materials submitted in support of his Whistleblower Complaint focuses mainly on four issues that arose during the SES contract negotiations: exclusive concession rights, payment of the leasehold excise tax, Cirque du Soleil, and Clise Mansion. Each is discussed below.

Exclusive Concession Rights

AEG and SES initially proposed that SES would "act as the exclusive concessionaire at Clise Mansion and food and beverage concessionaire for 'the Venue'", defined as "the concert venue at Marymoor Park."²⁸⁴ During negotiations, Brown said SES expanded its request to be the concessionaire for the entire park.²⁸⁵ Dotson said that he, Brown and Emerson disagreed with that because Parks had many partners that scheduled small events in the Park (like private picnics) where the partner obtained a banquet permit allowing alcohol service, "and we didn't feel like they should have to contract with SES to do that."²⁸⁶ Emerson explained that non-profit organizations have events in the Park "where the alcohol is actually a bit of a revenue generator for them, and if they have to give a cut to SES, well, they're not going to come to us anymore."²⁸⁷

Burns recalled an interaction in October 2012 where Brown informed him:

that they were close to an agreement with AEG but had run into difficulties with SES (through SES's principals, David Meinert and Marcus Charles) regarding exclusivity. In that email, Mr. Brown indicated that he had talked to Mr. Yang about Parks' desire to carve out of the concession agreement with SES about a dozen events that had historically occurred at Marymoor Park and had their own

²⁸² BURNS 222-223.

²⁸³ Yang 5/29/19 at 1:33:30-1:33:53.

²⁸⁴ BURNS 141.

²⁸⁵ Brown Answer to Burns Response at 3; Dotson 12/21/19 at 02:11:41.

²⁸⁶ Dotson 12/21/19 at 02:12:15.

²⁸⁷ Emerson 1/23/19 at 01:14:42; Brown Answer to Burns Response at 3 (partners included "very small non-profits, who would often have an annual event to fundraise").

food and beverage arrangements in place, and that Mr. Yang wanted to see the list of those events and groups.²⁸⁸

Burns said he met with Yang, reiterated the need for the carve-out, and it was ultimately included in the final Parks/SES agreement.²⁸⁹ Emerson said Parks "got most of what we wanted" on that issue.²⁹⁰ Yang said he did not recall the episode.²⁹¹

Leasehold Excise Tax

Leasehold excise tax (LET) is "a tax on the use of public property by [a] private party ... in lieu of the property tax."²⁹² The AEG/SES proposal stated that SES "will pay the applicable leasehold excise tax ... pursuant to Chapter 82.29A of the Revised Code of Washington ... currently set at 12.84%" and that SES would pay the LET on "all Clise Mansion rental fees" collected by SES.²⁹³ Brown said LET "is normally passed on to the party leasing public property" but that "SES contacted [Yang] and indicated to him that Parks never made them aware of this tax, even though it was identified in their original proposal." Brown stated that Yang asked Burns to resolve this issue, after which Brown, Burns, and Dotson met with Charles, who reiterated SES' position that the LET information was new, SES could not afford to pay it, and SES would not manage Clise Mansion if it were forced to do so.²⁹⁴ According to Burns, Yang suggested that he "assist in finalizing the deal" in January 2013.²⁹⁵ Yang did not recall anything about the LET issue.²⁹⁶ Charles pointed out that SES' initial proposal had included SES exclusivity for Clise Mansion, and SES no longer felt it should pay LET after SES consented to a non-exclusive Clise Mansion concession contract.²⁹⁷

However, Emerson, Dotson, and Brown explained that in anticipation of the AEG/SES deal, Parks and SES had defined the "premises" to which the state liquor license would apply as comprising the concert venue, event pad where Cirque du Soleil performs, and Clise Mansion. SES obtained a state liquor license with the premises so defined. Because of an interpretation of state liquor laws that would prohibit more than one holder of a liquor license for the same "premises", SES

²⁸⁸ Burns Response at 5.

²⁸⁹ *Id.* at 5-6.

²⁹⁰ Emerson 1/23/19 at 01:15:36; Dotson 12/21/19 at 02:14:20 ("a compromise was struck"); OMSBUDS 232-233, 251 (contract carve-out provision; list of small events).

²⁹¹ Yang 5/29/19 at 01:45:02.

²⁹² <https://dor.wa.gov/find-taxes-rates/other-taxes/leasehold-excise-tax> (last accessed June 23, 2019).

²⁹³ BURNS 141.

²⁹⁴ Brown Answer to Burns Response at 11.

²⁹⁵ Burns Response at 6.

²⁹⁶ Yang 5/29/19 at 01:46:23.

²⁹⁷ Charles 5/22/19 at 01:30:33; BURNS 141 (The 2012 joint AEG/SES proposal stated "SES shall be the exclusive concessionaire at Clise Mansion").

functionally had the exclusive right to serve alcohol at Clise Mansion (other than small legacy events, regardless of whether the Parks/SES agreement included exclusivity on its face).²⁹⁸ Brown said Parks staff ultimately felt they could concede the LET issue to SES because Parks expected to receive significant revenue from SES-managed Clise Mansion events during the contract term.²⁹⁹ Burns' written response to Brown's Whistleblower Complaint states "Parks indicated the LET was a small dollar amount and that Parks would approve of removing it. Based on that representation, Mr. Burns agreed with removing the LET."³⁰⁰

Cirque du Soleil

Brown said SES wanted to be the concessionaire for the Cirque du Soleil series, which was "a six week tour comprised of roughly 60 shows" at the Park "event pad", an open area separate from the concert venue within the Park. Though the initial AEG/SES proposal did not include the Cirque du Soleil series, Brown said Parks agreed on condition that Parks receive 10% of concession revenues.³⁰¹ Burns stated that before he became involved in negotiations in January 2013, Parks had agreed to a contract term designating SES the exclusive concessionaire for the event pad and requiring SES to pay Parks 10% of concession revenues for all Cirque du Soleil events except for the imminent 2013 performances. Charles complained that paying Parks 10% of concession revenue in addition to the 35% that he stated Cirque du Soleil wanted from SES "makes it almost not worth doing, unless there is a certain volume, which according to Cirque, they can deliver."³⁰² Charles further objected conceptually, stating "At the end of the day, SES doesn't understand how the right to concessions can be effectively sold to both Cirque and SES by the County under separate agreements for separate amounts due."³⁰³

Through Burns' direct negotiations with SES, the final agreement states "the Concessionaire shall pay the County a fee of ten percent (10%) of gross receipts, except for gross receipts from the Cirque du Soleil Event in 2013."³⁰⁴ Burns later stated that the term meant SES would pay Parks

²⁹⁸ Dotson 12/21/19 at 02:25:02; 02:28:08; Emerson 1/23/19 at 01:12:50, 01:15:36; Brown Answer to Burns Response at 11. Emerson said state liquor laws are "very gray" and difficult to navigate. In 2014 (the year after the AEG/SES contracts were executed), Parks met with the Washington State Liquor and Cannabis Board to gain clarity, but "we can never really get a clear answer from that agency." Emerson 1/23/19 at 01:15:36, 01:58:03. Brown Answer to Burns Reply at 12 (Liquor and Cannabis Board recognizes that "liquor license laws are really complicated").

²⁹⁹ Brown Answer to Burns Response at 11; see Dotson 12/21/18 at 02:44:06 ("our final negotiation, it was like, you know what, if you manage and operate Clise Mansion we'll pay the leasehold excise tax ... but you need to stay true to what you proposed.... I feel like we really bent over backwards to make it work and ... accommodate their needs").

³⁰⁰ Burns Response at 6; OMSBUDS 271.

³⁰¹ OMSBUDS 040; Dotson 12/21/18 at 02:23:05 (recalling that Parks was "OK with" SES having concession rights for Cirque du Soleil, as a precedent for that was set in the previous agreement with Premier Properties); *Id.* at 02:27:50 ("lucrative" Cirque du Soleil concessions).

³⁰² OMSBUDS 213.

³⁰³ *Id.*

³⁰⁴ OMSBUDS 234.

10% for all Cirque du Soleil events after the 2013 series.³⁰⁵ Emerson said she had shared that understanding.³⁰⁶ Brown noted the agreement does not explicitly provide for future Cirque du Soleil events and there was no guarantee that Cirque du Soleil would return to Marymoor Park because Parks and Cirque du Soleil (which historically visits the park every other year) were then in the fourth year of a five-year agreement.³⁰⁷ Brown said that conceding the 10% fee in the agreement was a result of "pressure to get the contracts negotiated" from the Executive's Office after Yang became "heavily involved."³⁰⁸

Clise Mansion

Brown and Burns agree that when Burns expanded his role into direct negotiations with SES in January 2013, the draft agreement still contained SES' initial proposal to become the exclusive concessions vendor for Clise Mansion.³⁰⁹ SES would pay Parks \$300 per month rent, 10% of all concessions revenue, 42% of rental receipts, and 20% of partnering services.³¹⁰ The AEG/SES proposal stated that SES would "manage, book, and cater gatherings at Clise Mansion" and "Develop additional programming" there.³¹¹ Charles, however, became dissatisfied with this. Burns stated "SES claimed it learned late in the negotiations that there was a long date hold in place at Marymoor's event pad for Cirque du Soleil and that concert holds and historic carve-outs during the summer months would negatively impact SES's ability to plan and hold events at the event pad and at Clise Mansion."³¹² Burns and Charles continued to negotiate in late January 2013, with Burns proposing and Charles rejecting an idea to sign a one-year agreement to ensure that the upcoming 2013 Cirque du Soleil events and the concert series had concessions, which would give Parks and SES more time to work on disputed issues.³¹³ Brown said SES indicated in late January 2013 that it was no longer interested in managing Clise Mansion or promoting special events there and elsewhere in the Park due to the profit margins being lower than SES had hoped.³¹⁴

Commitments offered by SES regarding Clise Mansion in its 2012 proposal with AEG had been a key Parks goal (Parks business development staff said they viewed them as the deciding factor in

³⁰⁵ Burns Response at 6.

³⁰⁶ Emerson 1/23/19 at 02:06:53.

³⁰⁷ Brown Answer to Burns Response at 5.

³⁰⁸ OMSBUDS 040.

³⁰⁹ Burns Response at 6; Brown Answer to Burns Response at 5.

³¹⁰ *Id.*

³¹¹ BURNS 140.

³¹² Burns Response at 6; Charles 5/22/19 at 01:23:42, 01:35:09 (discussing "squabbles" about Clise Mansion and lack of certainty about Cirque du Soleil booking dates and practices); Brown Answer to Burns Response at 7 ("given that the event pad is roughly ½ mile away from the Clise Mansion, there would be no impact by Cirque on the Clise").

³¹³ Burns Response at 7. Brown stated that the idea of a one-year agreement was True's and that Burns said he would speak with Yang about it. Brown Answer to Burns Response at 14.

³¹⁴ OMSBUDS 040.

awarding the AEG/SES contract over Monqui).³¹⁵ The final agreement provided SES with facially nonexclusive vendor rights to Clise Mansion and did not commit SES to any Clise Mansion operations, management or investments.³¹⁶ When Brown learned about the final compromises in the SES contract, Brown said he was:

extremely upset ... I stated that I still wanted their original proposal ... I requested to get one paragraph installed [stating] KC and SES would agree to meet and explore new events within 6 months.... This language was then dropped when Sung Yang and Bob Burns negotiated the final contract.

At each step of the way I relayed to Bob Burns that I felt this ... process and relationship was inappropriate. In addition, we were being taken advantage of and I did not believe it was in the best interest of Parks to continue ... with SES. It was very clear to me that ... Marcus Charles and Dave Meinert were using their relationship with Executive Dow Constantine to negotiate an agreement which allowed them to take those elements which were very lucrative at Marymoor Park ... and stripping out all of the pieces which were not as lucrative.³¹⁷

On January 25, 2013, Brown said he told Burns and True that "I did not support the [SES] contract and I would not sign." Brown said Burns called him late that night and "let me know that he expected me to sign the agreement on Monday."³¹⁸ Burns remembered the call and said he "believed that while Mr. Brown had concerns, he was on board to move forward with the agreement."³¹⁹

Burns sent Brown an email the morning of January 28, 2013 with the final draft of the SES contract, stating "Kevin, see attached. Let's discuss and sign this morning. Bob."³²⁰ Burns, Brown and Parks Deputy Director Katy Terry (Terry) met that morning, where Brown says he reiterated his objection that the final draft was "a bad contract for the County to enter into. Bob directed that I sign."³²¹ Burns recalled that he "urged [Brown] to sign.... I was absolutely saying, I think you should sign this, I think we should sign this, I think this is a good, fair deal."³²² Brown "thought long and hard" about whether to sign the contract and finally did so "with the letters UD between my first and last name" to signify that he was "signing **under duress**."³²³ Brown said he signed the contract that way rather than complain to the Ombuds at that time, because he had a small child

³¹⁵ Dotson 12/24/18 at 07:40; Emerson 1/23/19 at 01:26:49.

³¹⁶ OMSBUDS 232-251.

³¹⁷ OMSBUDS 040-041.

³¹⁸ *Id.* at 041.

³¹⁹ Burns Response at 7.

³²⁰ *Id.* at 581.

³²¹ *Id.* at 041.

³²² Burns 6/3/19 at 02:46:10, 02:47:42; 02:48:47.

³²³ OMSBUDS 041 (bold font in original); OMSBUDS 244 (SES agreement signature page included "Kevin UD Brown").

at home, his husband was primarily a stay-at-home parent, Brown thought the SES contract would be a one-time-only arrangement, and he was concerned about possible repercussions.³²⁴

Terry confirmed her contemporaneous understanding that Brown meant "UD" to mean "under duress" and recalled Brown wanted her to witness the signature because "he felt like he was being pressured to sign ... [a]nd should anything ever come of it, that he wanted somebody to have seen that."³²⁵ When asked if Brown's perception of being directed to sign the contract might be a misinterpretation on Brown's part, Terry said "that wouldn't be my expectation ... I don't know what all the conversations were, but I'm not aware of any other situation that's like this ... he's never had anyone witness him signing anything else ... Kevin doesn't tend to be a grandstander, so it doesn't fit."³²⁶ Terry said she had worked with Brown since 2006 and had observed times when Brown disagreed or had concerns with decisions made in the DNRP Director's Office above him, but Terry did not sense that Brown had a history of longstanding misinterpretations of other people's directions and comments.³²⁷

Perceptions Regarding Executive Office Involvement in AEG/SES Contract Negotiations

Brown maintained that "It is not normal for the Chief of Staff for the County Executive to be involved in such small details of a concession contract", pointing to the alcohol concessions carve-out for small or legacy events within the exclusivity section of the SES concession agreement.³²⁸ Brown further stated:

I did not have a relationship with Mr. Yang in which I felt I could ever say "No" to any request that was made to me. Mr. Yang was the boss of my boss, the Chief of Staff for Dow Constantine, and I therefore always felt there were no options other than to follow his direction. I constantly challenged Mr. Burns, my direct boss, on pushing back on the demands which came from Mr. Yang or from Dave Meinert and Marcus Charles.³²⁹

Yang said it was his job to implement Constantine's agenda and it was customary for him to be involved in contract negotiations involving Constantine's priorities.³³⁰ In addition to the Marymoor Park Concerts and concession agreements, Yang was involved in a contract between King County Metro and the Washington State Public Stadium Authority concerning use of a parking garage; negotiated for King County about the SODO arena development proposal; and participated in renewing arrangements with UW Medicine to operate Harborview Medical

³²⁴ Brown meeting with Stier, 6/29/18.

³²⁵ Terry 2/21/19 at 07:24.

³²⁶ *Id.* at 09:19.

³²⁷ *Id.* at 10:56; 11:41.

³²⁸ Brown Answer to Burns Response at 3; OMSBUDS 232-233, 251 (contract carve-out provision; list of small events).

³²⁹ Brown Answer to Burns Response at 4.

³³⁰ Yang 5/29/19 at 01:29:17; 01:42:35.

Center.³³¹ Regarding the SES agreement, Yang said "the two sides were kind of bickering over the terms.... And unless I get involved and understand what each side is saying and what their demands are, it's hard for me to just sit there and ... just listen to them.... I'm going to have to kind of get involved to understand what each side's bickering is."³³² Without citing specifics, Yang said there were times when he told SES to do what Parks told them to do, and other times when Yang would "follow up with the department." Yang said he viewed his activities as a "referee role that I would have to play."³³³

True said Yang was "not involved very often" in DNRP contract negotiations, but pointed out that, unlike the Big Ideas process, most DNRP contracts go through the formal procurement process in which requests for proposals state exactly what should be included in a bid, specify the criteria for every item, and the number of points available for each item.³³⁴

Emerson thought it was "odd" that the Executive's Office was involved to the extent it was in the Marymoor concession agreement. Having negotiated 25 to 50 contracts for Parks, Emerson said the only others where she could recall any Executive's Office involvement (characterized as "maybe we did get a call") were "big national events" like the USA Diving trials, a Professional Golfers Association event, and the Special Olympics.³³⁵ She believed each of those events offered "a national recognition, regional vitality piece to it" that she did not believe was present with Marymoor Park Concerts and concessions.³³⁶ Emerson said she did not have conversations with the Executive's Office regarding the Cirque du Soleil contract, which she said brings Parks \$700,000 per visit, significantly more than the concert series generated until 2015 and 2016 (when combined concert and concessions revenue to Parks also topped \$700,000).³³⁷ Emerson had not felt pressured before Parks made the concert series and concessions award to AEG/SES, but said she began to feel pressure during negotiations for several reasons:³³⁸ Timing issues; her feeling that Parks needed to on-board a new concessionaire so the new concert promoter could begin its work;³³⁹ Cirque du Soleil's first performance was scheduled for January 31, 2013, just three days after Brown signed the SES contract, and her assessment that Parks was concerned that having no concessionaire for those shows could result in Parks losing that contract in the future.³⁴⁰

³³¹ *Id.* at 07:27, 01:29:17. Yang also said he and Burns had been lead negotiators together for the County during the successful effort to purchase land on Maury Island that was slated for development as a gravel mine. *Id.* at 49:00.

³³² Yang 5/29/19 at 01:53:52.

³³³ *Id.* at 02:32:42.

³³⁴ True 5/31/19 at 01:17:55.

³³⁵ Emerson 1/23/19 at 55:01.

³³⁶ *Id.* at 55:54, 56:46, 58:49.

³³⁷ *Id.* at 56:46; Marymoor Concert Revenue, Attachment to Burns Response.

³³⁸ Emerson 1/23/19 at 42:32, 43:13

³³⁹ *Id.* at 43:40.

³⁴⁰ *Id.* at 01:08:15.

Based on numerous names of concessionaires other than SES that Parks staff had researched, Brown was optimistic that Parks could have quickly retained a concessionaire to service the upcoming 2013 Cirque du Soleil performances if Parks had ended negotiations with SES in January 2013. Brown believed that the WSLCB understood the complexity of state liquor laws and that they afforded flexibility such that the WSLCB would have permitted a late-contracted concessionaire other than SES under the circumstances.³⁴¹ Yet, Brown also acknowledged "It's possible" that the WSLCB might not have permitted alcohol sales by a different concessionaire in time for any Cirque du Soleil performances that year.³⁴²

Aside from Parks' own programmatic concern about timing, Emerson said she perceived pressure "coming from above Parks.... I know Sung was involved ... there aren't a lot of written communications on that."³⁴³ Throughout the SES negotiation, she said Burns and Brown were asking questions about the agreement "like anything we were negotiating with Marcus [Charles] or Dave [Meinert] ... and I know that information was being funneled."³⁴⁴ Emerson perceived that the Executive's Office "wants this contract done and we should get it done." When asked to identify the basis, she stated "I am only speculating, but I felt like they had a friendship or relationship. Dave Meinert is a huge player in this city, or was a huge player in this city, and those kinds of things, you know, those kinds of people get things done, get what they want."³⁴⁵

Dotson said he "kind of realized that Kevin was being forced to sign this agreement" on January 28, 2013. That day, Dotson said Brown asked him to make copies of an agreement Brown "received from upper management" that did not include terms concerning Clise Mansion that Brown had asked Dotson to prepare several days before. Dotson said he thought Parks was "still in negotiation" with SES at that point and "neither Kevin, Jessica, or I or anyone kind of working on and then negotiating this agreement was aware of that or had agreed on the final terms of the agreement."³⁴⁶ Dotson said that risks are typically shared when Parks enters into partnerships, but he perceived SES received a "no-risk deal." Asked to explain, Dotson said:

I don't know specifics, but I go back to that first meeting when, at the restaurant ... with the Executive and Sung being there, there's obviously some sort of influence going on, right? Like, at least that was my perception. And again, I don't know specifics, but kind of knowing how negotiations ended, it seemed like that influence carried through to the end.³⁴⁷

³⁴¹ Brown 7/9/19 at 02:09—13:41.

³⁴² *Id.* at 12:44.

³⁴³ Emerson 1/23/19 at 50:55.

³⁴⁴ *Id.* at 52:04, 52:20.

³⁴⁵ *Id.* at 54:01.

³⁴⁶ Dotson 12/21/19 at 02:00:02.

³⁴⁷ *Id.* at 02:40:42.

Terry said she was not directly involved in the contract negotiations but would hear about "very specific questions" coming from above Parks during that period. Then she would hear that "everybody was scrambling" to answer the questions,³⁴⁸ which was atypical as "We wouldn't be usually contacted that much about a contract."³⁴⁹ In response to an Ombuds question, she said:

this was clearly all coming through the Exec's Office and then it would come to us and ... it'd be about three layers till then it would come to our staff, and then they would have to have meetings. I think there were a lot of like, going and meeting, if not meeting with Sung, then having to get Bob Burns up to speed to then talk to Sung; there was a lot of that kind of activity.³⁵⁰

SES Contacts with King County (2013 to 2017)

County Payment of Deposit to Adecco on Behalf of SES

On January 29, 2013, one day after signing the SES agreement, Brown emailed True and Burns about SES declining to pay approximately \$9,000 of a \$14,000 deposit to the temporary staffing company, Adecco, that Cirque du Soleil used to obtain concessions staff for its upcoming shows. Brown's email recited the staffing company called Charles on four separate days and finally received a response on January 29, when Charles apparently said SES would only pay \$5,000 "and that if Adecco was unwilling to accept that offer, then perhaps it just was not going to work out."³⁵¹ To resolve the issue, Parks paid the outstanding \$9,000 deposit to Adecco, about which Brown said "We wanted the public to have a good experience and needed to ensure beverages would be served."³⁵² Burns believed Parks agreed to pay the deposit because Parks would eventually be reimbursed for the outlay, and Cirque du Soleil was an important partner that needed the deposit "to proceed with its upcoming event." Burns stated it was a group decision between Parks, DNRP and the Executive's Office "for the purpose of keeping Cirque du Soleil happy, not to accommodate SES."³⁵³ SES repaid Parks for its \$9,000 deposit.³⁵⁴

New Events for Marymoor Park

Burns said he had been optimistic that Parks and SES could create new events at Marymoor Park as AEG/SES's initial proposal had envisioned. Burns also said guaranteed dates at the event pad and Clise Mansion were difficult to secure, and disagreements about exclusivity, scheduling, and financial considerations resulted in no progress. Parks attempted to work with SES concerning a

³⁴⁸ Terry 2/14/19 at 02:40:42.

³⁴⁹ *Id.* at 59:26.

³⁵⁰ *Id.* at 01:00:09.

³⁵¹ BURNS 673, 692; OMSBUDS 290-291.

³⁵² Brown Answers to Ombuds Follow-Up Questions at 16.

³⁵³ Burns Response at 8.

³⁵⁴ Emerson 1/23/19 at 01:21:42.

Clise Mansion business model that "did not materialize."³⁵⁵ Burns said Brown raised concerns in 2012 and 2013 that SES was difficult to work with. During Spring 2013, Burns said he:

saw firsthand some of the interactions SES had with Parks staff related to Clise Mansion and began to see SES as a difficult and inflexible business partner. SES also had a pattern of going around Parks and straight to the Executive Office to make requests, which resulted in an uncomfortable relationship between Parks and SES.³⁵⁶

True said "SES would often bypass Parks' staff and go to the Executive's Office when they were unhappy with Parks" but noted "In a political environment it is not unusual for a frustrated constituent or contractor to go around the front line staff they are dealing with and try to get Department management or the Executive's office involved."³⁵⁷

Whether Parks was Owed 10% of Net Concession Receipts or 10% of Gross Receipts

In July 2013, SES argued that it owed Parks 10% of net rather than gross receipts.³⁵⁸ Parks calculated that it had received approximately \$10,000 per show from concessions on the basis of gross receipts, versus approximately \$100 per show on the net basis.³⁵⁹ Burns said he supported Parks' position that 10% of gross receipts was due, informed Yang about it, and Yang agreed.³⁶⁰ SES dropped the issue.³⁶¹

CHOMP! Festival, Long-Term Contract Extension, and Venue Capacity Expansion

In Spring 2015, Parks asked AEG if it could book a musical performance for the inaugural year of the CHOMP! Festival that Parks had selected Artist's Home to operate. AEG offered Parks a performer that Parks believed did not offer broad enough appeal to the targeted audience. Brown sent True an email suggesting that Constantine ask Meinert to help find a performer. Brown also asked whether Parks should request Constantine to make the 'ask' to Meinert, or if Parks should reach out directly to Meinert. True replied she would ask Constantine about it.³⁶² True sent Constantine a four-paragraph draft email for him to send Meinert, prepared by Parks, introducing the Festival, its purpose, and making the request to help secure a musical performance.³⁶³ Constantine sent the email to Meinert on May 29, 2015, commenting "our parks

³⁵⁵ Burns Response at 8.

³⁵⁶ *Id.*

³⁵⁷ True Response at 3.

³⁵⁸ BURNS at 339-340.

³⁵⁹ OMSBUDS at 288.

³⁶⁰ Burns Response at 8.

³⁶¹ BURNS at 339.

³⁶² BURNS at 354, 802.

³⁶³ CONSTANTINE at 000100-000101, 000344.

department wanted me to send to you under my name. Since I would never talk like that, I'm just emailing it as is."³⁶⁴ Meinert replied on June 1, 2015 that he was "psyched this event is happening" but he was unable to help secure musical talent for it. Meinert assumed SES would be selling beer at the event, asked if there was a beer sponsor, and offered to help with that. Constantine wrote back "Let's have a meeting with the organizers" and forwarded the email string to True,³⁶⁵ writing "Need meeting btw our team and Meinert/Charles."³⁶⁶

On June 17, 2015, True emailed Constantine with two options for CHOMP! performers: those not then touring (such as DEVO or English Beat), or a less-well-known local band with a local following. True wrote she was seeking time on Constantine's calendar, that "I am not trying to get you to make every decision on this I just know you are very interested", and "We have a meeting scheduled with Meinert."³⁶⁷

On November 20, 2015, Meinert emailed Constantine at his Gmail address asking, "Can we meet and talk about upping the capacity of Marymoor and expanding the venue? Also, there's some booking issues we should discuss where Parks are going to lose the county money from dumb stuff[.] We should have Sung join us too, with Marcus and Rob." Constantine replied "Yes" and forwarded to email string to his executive assistant with a request to "Pls contact Dave and set this up."³⁶⁸ On December 2, 2015, Meinert emailed Constantine and his executive assistant, Yang, Charles, and Thomas at their personal email addresses, stating "Hey all, can we set up a meeting this month to discuss improvements to Marymoor, expanding capacity, and extending our contracts?" Yang promptly replied "Sure. We'll email you some available times."³⁶⁹

On January 4, 2016, Constantine told True he "would like to get together to talk about CHOMP!." True emailed Brown, Emerson, Terry, and Lee Ann Hughes (Hughes) of Parks saying "Dave Minert [sic] came in to talk with [Constantine] about their ideas. We should meet with him soon"³⁷⁰ On January 5, 2016, Meinert emailed Yang, and copied Charles and Thomas (the new head of AEG's Northwest Office), stating:

Sung – Happy New Year. Hope you had a great holiday break. I wanted to follow up on the meeting we had before the holidays. Any word on the issue around CHOMP, lengthening the season, upping capacity, and working towards a longer deal?³⁷¹

³⁶⁴ *Id.*

³⁶⁵ *Id.*

³⁶⁶ OMSBUDS at 287.

³⁶⁷ CONSTANTINE 000336.

³⁶⁸ *Id.* at 001397-001401.

³⁶⁹ *Id.* at 001395-001396.

³⁷⁰ TRUE at 001.

³⁷¹ YANG at 154.

In a detailed document titled 2016 Update, Brown described a series of meetings that he said occurred between mid-January and early February of 2016, mainly involving himself, Burns, Yang, Meinert, and Charles. Brown described the subjects of the meetings as primarily about SES seeking a 15- to 20-year extension of its agreement with Parks; expansion of the concert venue maximum capacity from 5,000 to 6,000 or 7,500; and the possibility of becoming the concessionaire for the CHOMP! Festival.³⁷²

On January 19, 2016, Charles emailed Yang concerns about Trucktoberfest, an event where entities other than AEG/SES were "effectively selling concert tickets" at Marymoor.³⁷³ Yang forwarded Burns the email on January 21, 2016, and later that day Burns provided a detailed reply after engaging with Emerson, explaining that the event was allowed on the event pad per Parks' agreements with AEG and SES.³⁷⁴ On January 25, 2016, Burns emailed Brown a list of questions titled "Marymoor Park Logistics bb q's.pdf" regarding the issues raised in the email forwarded by Yang.³⁷⁵ The next day, Brown sent Burns a document, Marymoor Park Logistics/Follow Up, in which Brown provided answers to Burns' questions, noting that AEG was not eligible to apply for CHOMP! because its application was turned in after the deadline.³⁷⁶

Separate from the 2016 Update described above, Brown provided a half-page of written notes he said he produced roughly contemporaneously with a February 5, 2016 meeting between Brown, Meinert, Charles, Thomas, Yang, and Burns. Those notes indicate that the group discussed Brown's answers to Burns' written questions above, and then shifted to extending the current contracts by twenty years with Brown explaining that contracts longer than five years require approval by the County Council and perhaps the County Procurement Section.³⁷⁷ The notes then state participants "brainstormed alternative strategies to get around Council and to get around Procurement," with Yang suggesting multiple extensions of five years to avoid the need for such approvals or developing a "tightly worded and limiting [RFP] structured to limit competition." Brown's notes end after stating that "To his credit, Bob attempted to contain direction on this issue. On the way back to the office Bob and I talked about how Sung was putting us in a difficult situation."³⁷⁸

On February 8, 2016, Charles sent Brown an email, copied to Burns, Yang, and Meinert, proposing to extend SES's agreement with Parks "for 15 to 20 additional years" in exchange for investments

³⁷² OMSBUDS at 292-295. The record includes several versions of the 2016 Update document. The 'properties' tab to an MS Word version provided to the Ombuds by Brown in a September 19, 2018 meeting indicates the document was created, last modified, and printed on February 11, 2016.

³⁷³ BURNS at 777.

³⁷⁴ *Id.* at 798-799.

³⁷⁵ BURNS at 801.

³⁷⁶ *Id.* at 809-812.

³⁷⁷ See KCC 4.57.020 ("The county council must approve any concession contract with an original term that exceeds five years. For the purpose of this section, 'original term' includes extensions that could be effective without county approval.")

³⁷⁸ OMSBUDS 316.

that SES would make to the Clise Mansion kitchen.³⁷⁹ Brown and Burns agree that Parks and DNRP did not support that idea.³⁸⁰ However, Brown stated that Yang supported it and "scheduled a follow-up discussion about how to accomplish this goal."³⁸¹ Burns recalled SES proposing a fifteen- or twenty-year extension, and a meeting about it with SES. He said he and Brown were there only to listen and he thought Yang asked him and Brown to "go do analysis on this", but nothing was resolved at the meeting.³⁸² Meinert said he typically tries to obtain leases for fifteen to twenty years, and that five years is a "short amount of time."³⁸³ Kochan said there is no standard length for concert series deals and that five years was "a reasonable number."³⁸⁴ The County did not extend the AEG/SES agreements by fifteen or twenty years.

Brown speculated that the effort to extend the contract to a longer term ended due to Charles sending the proposal to him by email when communications about the matter were, Brown stated, intended to be in-person only; and due to Brown specifically telling Burns and True why he felt further conversations with AEG/SES about the extension were not appropriate.³⁸⁵

Collection of SES Disputed Gross Concession Receipts for Cirque du Soleil

The 2013 Parks agreement with SES provided that "the Concessionaire shall pay the County a fee of ten percent (10%) of gross receipts, except for gross receipts from the Cirque du Soleil Event in 2013."³⁸⁶ SES paid Parks 10% of gross receipts for concessions sold during the concert series, but SES did not pay Parks for any concession sales at the Marymoor event pad where Cirque du Soleil performed.³⁸⁷ Emerson stated that she and Brown discussed the issue with Burns "a couple of years" after 2013, and she thought they were all agreed that Parks would not collect the 10% because SES also paid a percentage to Cirque du Soleil per those two entities' bilateral contract (which had been Charles' written objection to paying Parks the 10% share in 2013).³⁸⁸ Emerson said she did not receive any direction about what to do when she brought up the non-payment to Burns and Brown. With other vendors, Emerson said, Parks' business office sends invoices and reminders to remit payments; when asked to elaborate by the Ombuds, she said:

not with this agreement ... because I think there was an understanding that they were never going to pay back for a second.... I do not think that I would have made

³⁷⁹ BURNS at 363.

³⁸⁰ Burns Response at 9; Brown Answer to Burns Response at 7.

³⁸¹ Brown Answer to Burns Response at 7.

³⁸² Burns 6/3/19 at 03:57:05.

³⁸³ Meinert 5/16/19B at 26:55.

³⁸⁴ Kochan 6/25/19 at 01:31:45.

³⁸⁵ Brown Answer to Burns Response at 8.

³⁸⁶ OMSBUDS 234.

³⁸⁷ OMSBUDS 350-351.

³⁸⁸ Emerson email to Stier, March 6, 2019; OMSBUDS 213.

any headway on that if I had tried to enforce that part of the contract; I really honestly do not believe that I would have been allowed to take that further.³⁸⁹

Emerson's perceptions were based on Charles' January 2013 email objecting to paying the 10% for Cirque du Soleil shows,³⁹⁰ as well as her perception that "my boss being told to sign a contract; like, this was not your normal contract ... there were so many holes in that agreement, I don't think that would have held up anywhere."³⁹¹ Terry said she knew SES was not paying Parks the 10% of Cirque du Soleil concessions revenues,³⁹² and that Emerson had checked about what to do,³⁹³ but that "this was a more political contract, and I think there was a sense that there were things that were negotiated in it—it's what was the intent? ... kind of picking your battles."³⁹⁴

Later, in 2017 when DNRP and Parks prepared to negotiate new concert and concession agreements, Burns and True noticed that SES had not paid any receipts for Cirque du Soleil concessions. Burns asked Emerson why that was so, since the SES agreement appeared to require 10% gross receipts for all concessions except for the 2013 Cirque du Soleil shows (an exception which Brown later wrote that Parks opposed). True also sought confirmation that Parks had not collected the 10%. In preparing to respond to the 2017 questions from True and Burns, Brown drafted an email stating that 2013 had been the last year of Parks' contract with Cirque du Soleil and there was no guarantee of another contract at that time. When Cirque du Soleil later committed to 2015 and 2017 performances, Brown wrote "it was understood" that the 2013 terms allowing no payment "were the status quo for the entirety of this contract."³⁹⁵

True denied that she, Burns, Constantine, or his staff directed Brown not to collect revenue from SES.³⁹⁶ Burns recalled that Emerson told him that collecting the 10% "was very difficult for them because they 'have been burned before' when pushing on SES, that SES would just complain to the Executive Office and it would put Parks in a difficult position."³⁹⁷ In May 2018, Brown emailed Burns saying "Given past challenges with SES and the relationship they have, Parks staff have not felt they had the authority to enforce this component of the agreement. This was an area of concern which we were hoping to address in an updated RFP." In response, Burns wrote to Brown "You need to enforce the contract and the concessionaire must pay what they owe the County per the contract terms."³⁹⁸ Burns and True both later confirmed that they did not know of a similar situation where the County had not collected revenue owed to it under a contract, though

³⁸⁹ Emerson 1/23/19 at 02:08:05.

³⁹⁰ OMSBUDS 213.

³⁹¹ Emerson 1/23/19 at 02:13:35.

³⁹² Terry 2/21/19 at 01:13:02.

³⁹³ *Id.* at 01:13:54.

³⁹⁴ *Id.* at 01:14:35.

³⁹⁵ OMSBUDS 350-351; True Response at 6-7.

³⁹⁶ True Response at 7.

³⁹⁷ Burns Response at 12.

³⁹⁸ BURNS 455.

True added she knew of other instances in which the County had sought to collect from other types of contractors and consultants that owed the County money.³⁹⁹

On August 6, 2019, after all in-person interviews in this investigation were complete, the Ombuds received a memorandum drafted by True titled "New Information Regarding Brown Complaint" dated July 19, 2019, and a number of related documents.⁴⁰⁰ True states that the memorandum was prepared based on information she received after asking Parks employees to provide updated information regarding revenue collected from SES between 2013 and 2018, particularly focused on facts related to Brown's allegations regarding Parks' collection of concessions revenue for the Cirque du Soleil and Teatro ZinZanni events at Marymoor Park. This memorandum and the related records provided by True document the series of events leading to Parks failure to collect 10% of concessions revenues from SES, and also address the events leading to Parks' 2017 amendment of its contract with Teatro ZinZanni to reduce fees paid to King County. In sum, True's memorandum asserts that Parks' failure to collect fees from SES and Parks' reduction of the fees collected from Teatro ZinZanni are related to terms set forth in the County's contracts with Cirque du Soleil and Teatro ZinZanni that conflicted with terms in the County's contract with SES. True's memorandum states that "[i]n hindsight, there were ways we could have better addressed and corrected the contract conflicts but there is nothing in these records or my recall of the events that point to the Executive, Burns, or I directing or suggesting to Parks staff not to collect concessions revenue from SES."⁴⁰¹

Reduction of Teatro ZinZanni Fees and Payments to County Due to SES Involvement

In 2018, Teatro ZinZanni realized that SES's liquor license at Marymoor Park is exclusive, and that Teatro therefore could not contract with another concessionaire. Teatro ZinZanni claimed they would sustain a loss for their 2018 season at Marymoor due to "the unfortunate situation of SES's involvement."⁴⁰² A representative of Teatro ZinZanni contacted Dotson on March 19, 2018, regarding the "critical financial situation that Teatro Zinzanni is in as a result of using SES as our alcoholic beverage provider."⁴⁰³ SES did not remit payments to Parks for concessions it sold at Teatro ZinZanni performances at the Marymoor event pad.⁴⁰⁴

Brown wrote that both Teatro ZinZanni and Cirque du Soleil told Parks that SES charged them higher fees than other providers.⁴⁰⁵ Teatro ZinZanni requested, and Parks approved, a modification of fees and other payments to Parks to resolve the matter for Teatro ZinZanni's 2018

³⁹⁹ Burns 6/3/19 at 03:08:56; True 5/31/19 at 02:02:46.

⁴⁰⁰ "Memo to Slonecker Re Cirque 7_19_19.pdf", attached to Slonecker email to Stier 8/6/19.

⁴⁰¹ *Id.* at 3.

⁴⁰² OMSBUDS 455-456.

⁴⁰³ *Id.*

⁴⁰⁴ BURNS 455.

⁴⁰⁵ *Id.*

season. Teatro ZinZanni paid Parks \$2,700 per month rent instead of \$5,000, and 1% gross ticket sales instead of 2%.⁴⁰⁶

The July 19, 2019, memorandum True provided to the Ombuds discusses conflicts between the relevant language in the SES and Teatro ZinZanni contracts and indicates that the True believes that the County's amendment of the Teatro ZinZanni contract was necessitated by that conflict.⁴⁰⁷

Planning for Expiration of First AEG/SES Agreements and Subsequent RFP Process (2017)

In Spring 2017, Parks was planning for the expiration of the AEG/SES agreements at the end of that year.⁴⁰⁸ Parks stated preference was to allow the next concert promoter to subcontract with a food and beverage concessionaire of its choice.⁴⁰⁹ True later said she had told Brown she wanted a transparent open, competitive RFP process using the County's Procurement Section.⁴¹⁰ Brown disputed that and said he had actually said that to her.⁴¹¹ True said she discussed having the Procurement Section post the concert series RFP first, then post the food and beverage RFP later, to create more time to determine programming objectives at Clise Mansion.⁴¹² Brown denied that a specific conversation about working with the Procurement Section took place.⁴¹³

True and Brown did agree that there was a meeting of the minds in May 2017 that Parks would use a transparent and competitive RFP process for the next concert and concessions contract.⁴¹⁴ True said she briefed Yang on that proposal on May 25, 2017.⁴¹⁵ Brown believed Yang had told True that he preferred linking the concert series and concessions together in one contract because that would reduce competition and qualified applicants as such services are not ordinarily provided together. Brown also believed Yang told True that he would check with Constantine and provide direction based on Constantine's decision.⁴¹⁶ True denied that Yang directed her to link the concert and concessions contracts in that way.⁴¹⁷ A March 2018 text message from True to Rachel Smith (Smith), Yang's successor as Constantine's Chief of Staff and Deputy Executive, said:

⁴⁰⁶ OMSBUDS 454-456, 544.

⁴⁰⁷ "Memo to Slonecker Re Cirque 7_19_19.pdf", attached to Slonecker email to Stier 8/6/19.

⁴⁰⁸ True Response at 4. Yang, Meinert, and Charles met on February 15, 2017, at Charles' Local 360 restaurant. The subject and content of the meeting is unknown. YANG 016.

⁴⁰⁹ *Id.* See OMSBUDS 346.

⁴¹⁰ True Response at 4.

⁴¹¹ Brown Answer to True Response at 5.

⁴¹² True Response at 4.

⁴¹³ Brown Answer to True Response at 5.

⁴¹⁴ True Response at 4; Brown Answer to True Response at 5.

⁴¹⁵ True Response at 4.

⁴¹⁶ OMSBUDS 330-331.

⁴¹⁷ True Response at 4.

Ok, as a bit of background, last spring [2017] when we were getting ready to issue the RFP for the concerts we proposed having the concert promoter hire the concessionaire. Sung talked to Dow and the direction was to do them separately. AEG's contract includes a provision to do this if we trigger it. It is an option to doing another RFP. But AEG chooses the contractors and submits the list to us for approval.⁴¹⁸

Brown's written narratives allege that on June 14, 2017, True entered his office, shut the door and "let me know that Dow wanted to ensure that Seattle Event Solutions got the contract for concessions."⁴¹⁹ Asked by the Ombuds exactly what True said, Brown replied that her words were "I've spoken with Dow. He wants to ensure that SES gets the contract for concessions."⁴²⁰ Brown said SES was a "terrible partner" and was difficult for Parks staff to work with, to which True responded "I know" and discussed how to manage the situation, bringing Emerson into the conversation to brainstorm. With Emerson present, Brown said True slightly changed what she had previously told Brown – saying that "Dow wanted SES to be 'eligible' to apply through the RFP process."⁴²¹ Brown said the conversation led True to ask Emerson to check with Procurement to see if Parks could run the concessions RFP separately, then transfer the contract to the promoter after it was executed.⁴²² True denied Brown's version that she went to Brown's office, denied shutting the door, and denied that she made any statement about Constantine wanting to be sure SES was selected as the Marymoor concessionaire.⁴²³ True stated that she instead told Brown she "thought it might be easier" to assign the concessionaire agreement to the promoter after selection through the Procurement Section.⁴²⁴ Emerson later said True's alleged statement about wanting SES to be 'eligible' for the RFP sounded "familiar", but she was not sure and could not confirm having heard it.⁴²⁵ Emerson did not recall the scenario in which the concession agreement might be assigned to the promoter after execution, but did recall the idea to let the promoter itself subcontract with a concessionaire.⁴²⁶

True said when she learned the concessionaire agreement could not be assigned after execution, she abandoned that idea.⁴²⁷ However, when Brown followed up with an email stating "I assume you want us to move forward with RFP in which the event coordinator [concert promoter] hires concessionaire," True replied "I need to talk to you."⁴²⁸ Brown said True reverted to the idea of posting two separate RFPs for the promoter and concessionaire, but in materials submitted to

⁴¹⁸ CONSTANTINE 000018.

⁴¹⁹ OMSBUDS 331; OMSBUDS 782; Brown Answer to True Response at 5.

⁴²⁰ Brown interview, June 29, 2018.

⁴²¹ Brown Answer to True Response at 5.

⁴²² *Id.* at 5-6.

⁴²³ True Response at 5; True 5/31/19 at 02:48:58.

⁴²⁴ True Response at 5.

⁴²⁵ Emerson 1/23/19 at 02:34:54.

⁴²⁶ *Id.* at 02:37:57.

⁴²⁷ True Response at 5; see OMSBUDS 356.

⁴²⁸ OMSBUDS 607.

the Ombuds he questioned why it would have been acceptable to assign a food and beverage concession contract to the promoter but not acceptable to allow the promoter to subcontract itself with a concessionaire from the start.⁴²⁹

Brown's contemporaneous notes dated June 22, 2017, state that Yang had wanted to meet with Burns about the concessions RFP and contract, but Burns was on vacation, so True recommended Yang meet with Brown. The notes state: True said "This is really political, but we need to deal with this the best we can;" to which Brown replied "Christie, you know my concerns on this. I just want a fair an open process;" to which True replied "Stay calm and maintain your composure."⁴³⁰ Brown's notes of the June 23, 2017, meeting he attended with Yang indicate Yang asked about numerous details of the next Marymoor RFPs, including: schedule; exactly what day the concert RFP would be published; criteria; how broadly it would be advertised; whether Parks would run a concessions RFP, when it would be published and if it would include the entire Park; and whether a concessionaire percentage would be included in the concert RFP.⁴³¹ The notes indicate that Yang "want[s] to be updated regularly."⁴³² True said that, at the time, she believed Parks would work with the Procurement Section in summer and early fall of 2017 to post separate RFPs, one for the concert promoter and one for the concessionaire.⁴³³

Brown said that after True (according to Brown's allegation) directed him to ensure that SES was selected as the concessionaire based on Constantine's wishes, Brown "changed the approach" for the concessions contract since he no longer trusted "that an open, competitive process would occur." Brown asked Emerson and Dotson to aggressively recruit potential partners, including those that could develop Clise Mansion programming. Brown said he wanted "the highest revenue stream" and to "strengthen partnership relationships."⁴³⁴ Brown said he advised True in a bi-weekly one-on-one meeting "that we were in touch with several parties and that there was interest in providing services particularly at the Clise Mansion."⁴³⁵ Brown's undated written notes for this meeting, titled "Christie 1:1" appear to cover 10 topics, each with a bold heading and two to three lines of text, among them:

Marymoor Concerts/Concessions – AEG identified as top qualified responder. Moving forward with notification/negotiations. We have two potential parties which may have interest in Concessions/Marymoor Clise. (Culinary School-Caterer, Tom Douglas). Due diligence on viability.⁴³⁶

⁴²⁹ Brown Answer to True Response at 6.

⁴³⁰ OMSBUDS 361.

⁴³¹ OMSBUDS 344.

⁴³² OMSBUDS 363.

⁴³³ True Response at 5.

⁴³⁴ Brown Answer to True Response at 6.

⁴³⁵ *Id.* at 7.

⁴³⁶ OMSBUDS 505.

In a one-on-one meeting with Brown that True recalled from late October or early November 2017, True said Brown did mention interested parties possibly submitting proposals regarding concessions, and she assumed Brown meant proposals that would be submitted through the formal RFP process run by Procurement.⁴³⁷

In written materials submitted to the Ombuds, Brown said that Parks had not been "actively solicit[ing] Big Ideas proposals"; rather, that staff had been seeking partners for programming and concessions at Marymoor Park, including Clise Mansion.⁴³⁸ In a later interview, Brown said:

I moved forward on two tracks. I am like, if we're going to do an RFP as they're asking us to do, we are going to make sure that we beat the streets and get as much competition out there as possible ... we want the right people in there that are going to be good partners, but more importantly, bring revenue streams⁴³⁹

Brown said he did not tell True that he was moving forward on two tracks, and did not tell her he was considering using the Big Ideas portal.⁴⁴⁰ Brown handled it that way, he said, not because he was trying to deny SES an opportunity to apply, but because he was concerned that an open RFP process would be manipulated to ensure that SES was awarded the concessions contract consistent with the (disputed) instruction Brown said True had relayed to him regarding Constantine's desire that SES have it.⁴⁴¹ Emerson recalled that Brown said he briefed True on the new proposals, including "potentially ... awarding a contract ... working through our Big Ideas and that [True] had okayed that."⁴⁴² However, in an email dated October 31, 2017, Emerson recommended to Brown that "Parks contract[] with Edible Entertainment to manage and program the Clise mansion."⁴⁴³

2017 Marymoor Park Concert Promoter Contract Actions

The County's Procurement Section posted the concert series RFP on July 13, 2017.⁴⁴⁴ AEG and Seattle Theater Group submitted responsive proposals, and Parks selected AEG for a second five-year concert series agreement.⁴⁴⁵ True stated that Brown did not share any issues or concerns with her about the award or negotiation of that agreement.⁴⁴⁶ Brown disagreed with that

⁴³⁷ True Response at 6.

⁴³⁸ Brown Answer to True Response at 6-7.

⁴³⁹ Brown 7/9/19B at 26:03.

⁴⁴⁰ *Id.* at 28:06.

⁴⁴¹ *Id.* at 29:42.

⁴⁴² Emerson 1/23/19 at 02:41:16.

⁴⁴³ OMSBUDS 612; OMSBUDS 521, 000529-000531.

⁴⁴⁴ True Response, Exhibit A.

⁴⁴⁵ The 2017 Parks/AEG agreement provides that Parks may contract directly with a food and beverage concessionaire to work with AEG, or that AEG may subcontract with a concessionaire of its choice if Parks did not execute such an agreement. OMSBUDS 385.

⁴⁴⁶ True Response at 6.

characterization, stating that there had been what he termed a "minor sticking point" at the end of the AEG negotiations concerning September concert dates. He said he had recommended not extending the series into September for the same reasons he had presented in 2016, but that True directed Parks to see how to accommodate AEG while accounting for Parks' concerns.⁴⁴⁷

On November 13, 2017, Meinert emailed Smith as follows:

Rachel

Thanks for meeting with Rob [Thomas] and I last week. Wanted to follow up and make sure we're on this, so here's a list of things we discussed:

1. Rachel – Changing contract with Parks and AEG to allow for more shows in September
2. Rob – start plans to extend capacity of concerts to 7,500
3. Rachel – we need to renew the SES deal with Parks which expires in January. We should get that done this year. We need to plan for next season asap.⁴⁴⁸

Meinert and Smith exchanged emails on November 21, 2017. Meinert wrote "following up on this" referencing his November 13 email. Smith responded that Kelli Carroll (Carroll), Director of Special Projects in the Executive's Office, was "working on this." Meinert replied "sounds good. We really need the SES contract done asap", to which Smith replied "Roger that. We will approach with urgency!"⁴⁴⁹ Brown said he received a call on November 21st from Executive Office staffer Diane Carlson (Carlson), who told Brown the Executive had questions or concerns about the concert series contract and that Smith had asked her to contact Brown to "see if we could change the terms of the agreement with AEG."⁴⁵⁰ Later that day, Brown emailed Carlson reiterating Parks' concerns about the September dates, and that Parks had been "very flexible" about approving such dates previously and rarely denied a request. He also said "Little disappointed Rob/Dave have contacted Dow/Rachel as we would prefer to manage conversation. Jessica has been point and there have not been any issues raised with her."⁴⁵¹

On November 27, 2017 Emerson forwarded to Brown a voicemail from Carroll requesting background information on AEG in response to a contact from Meinert, who was seeking

⁴⁴⁷ Brown Answer to True Response at 7; see OMSBUDS 620.

⁴⁴⁸ CONSTANTINE 000506.

⁴⁴⁹ CONSTANTINE 000505. Ms. Smith later said, "I probably did not approach it with urgency, but I probably assured him that I would ... to get him off my back and to buy me some time." Smith 5/21/19 at 01:02:06.

⁴⁵⁰ OMSBUDS 332, 382.

⁴⁵¹ *Id.*

resolution of an issue related to Marymoor and AEG. Carroll's said she had spoken with Burns and was contacting Emerson for background before connecting with Smith about the matter.⁴⁵²

In a December 14, 2017 email to True and Burns, Brown reviewed Parks' concerns about September concert dates and provided draft language "per request" to allow September dates under specified conditions.⁴⁵³

2017 Marymoor Park Concessions Procurement

On November 22, 2017 Brown emailed himself at his personal Gmail account. He wrote he had met True that day after Burns told her of Brown's efforts to recruit concessionaires other than SES for Marymoor Park. Brown wrote he and True disagreed about whether he had previously briefed her on his plan, and that True "stated that this is not what Dow expects and that this is not a message she can go back and deliver to Dow." Brown listed reasons why Parks should not contract with SES again, and wrote True "stated that we had many projects up in the Executive's office [and] that the department needed his support ... and that we could not afford to piss him off."⁴⁵⁴ In her interview with the Ombuds, True denied making this statement and denied that she had been told she could not or should not bring proposals other than those including SES to Constantine.⁴⁵⁵ True also said:

I'd been telling him [Brown] and the Executive that the process we were going to use was to go through FBOD's [formal procurement] process. So I could very well have said [to Brown] well, we can't just all of a sudden go to a process now and just say, okay, here are the two proposals that Kevin found and then head down a different path. That wasn't what I had communicated to Kevin or to the Exec's Office that we were going to do I would say I don't know if it'd have been Dow necessarily, but the Executive's Office would be very angry if we were, if Parks was soliciting proposals without going through the RFP process ... because they [Parks] were going about a process to exclude SES from being able to compete and that could've been the case for anybody ... it would fly in the face of what we'd all been talking about for several months.⁴⁵⁶

True's account is not inconsistent with written notes (titled 'Context') Brown submitted to the Ombuds concerning the Brown/True November 22, 2017 meeting, which state:

⁴⁵² "Jelly Carrol.m4a" audio file, provided via email from Hagin to Stier, April 30, 2018; OMSBUDS 006; Burns Response at 10 ("In November 2017, Mr. Burns received a call from Kelli Carroll in the Executive Office about a parking issue and AEG doing shows later in September").

⁴⁵³ BURNS 406-410.

⁴⁵⁴ OMSBUDS 407; see OMSBUDS 521.

⁴⁵⁵ True 5/31/19 at 03:03:03; 03:04:16.

⁴⁵⁶ *Id.* at 03:03:38; 02:49:24.

She got very angry and said this is not at all what we agreed on. This is not at all what the Executive is expecting and you did not brief me on this.... Her position was that she had given very clear direction of what the Executive was expecting and there is no way she can go back to him with something else.⁴⁵⁷

Terry did not recall hearing anything about True saying that Constantine did not want Parks to take a particular course, or that "we couldn't afford to piss Dow off."⁴⁵⁸ Emerson generally recalled Brown telling her about the November 22nd meeting, including that True told Brown "the Executive's Office said that ... this is not the direction we can take." Emerson did not recall whether Brown had specifically referenced "the Executive's Office" or "Dow" when Brown relayed True's comment.⁴⁵⁹ Emerson did not recall Brown telling her that True said they could not afford "to piss [Constantine] off."⁴⁶⁰

In December 2017, the same time frame in which Brown drafted conditions for the September concert dates to include in the new AEG agreement, Brown told True that the concessions RFP would cover only the concert venue, not food and beverages for the entire park.⁴⁶¹ Brown later said that Parks was seeking flexibility to contract with a provider that could program and utilize Clise Mansion, and to work with event pad partners individually on their concessions needs. He said Parks intended to work with the WSLCB on ways to accomplish Parks' goals.⁴⁶² However, True's understanding was the WSLCB would authorize only one liquor license for the park which "required the liquor license to be tied to a fixed structure and the only structure that the [WSLCB] considered to be adequate at Marymoor was Clise." True said she asked Brown to have his staff provide her with a better understanding of the issues involving the concessions agreement, and that she told Brown or his staff "that she had heard them discuss two schools of thought about whether Clise should be in the food and beverage concessions RFP and she needed to understand how best to proceed with the food and beverage RFP."⁴⁶³ Brown denied that there had been two schools of thought. He stated later that Parks "specifically wanted the ability to negotiate with a programming partner in the Clise Mansion."⁴⁶⁴ Neither Emerson nor Dotson recalled the phrase "two schools of thought," but they both remembered conversation about whether to have separate RFPs for the concert series and Clise Mansion, and Emerson recalled conversations with WSLCB about whether separate agreements were possible.⁴⁶⁵

⁴⁵⁷ OMSBUDS 406; but see OMSBUDS 616 (Brown's written notes reiterating and expanding on his allegation about True passing on to him "a *directive* from Dow, not that Dow hopes we will consider SES." (italics in original)).

⁴⁵⁸ Terry 2/21/19 at 01:48:47.

⁴⁵⁹ Emerson 1/23/19 at 02:43:20.

⁴⁶⁰ *Id.* at 02:45:32.

⁴⁶¹ True Response at 8; Brown Answer to True Response at 10.

⁴⁶² Brown Answer to True Response at 10.

⁴⁶³ True Response at 8; OMSBUDS 426.

⁴⁶⁴ Brown Answer to True Response at 10.

⁴⁶⁵ Emerson 1/23/19 at 02:47:30; Dotson 12/24/18 at 01:15:28.

2018 Marymoor Park Concessions Procurement

On February 16, 2018, Emerson prepared and sent a draft scope of work for the Marymoor concessions RFP to True, copied to Brown and Terry.⁴⁶⁶ True returned edits, among them adding Clise Mansion to the agreement language. True said she made that addition because she believed the liquor license was tied to the entire park unless Parks could identify a building other than Clise Mansion that would meet WSLCB requirements.⁴⁶⁷ Brown later told the Ombuds that Parks had identified "several other buildings which we felt could meet" WSLCB criteria,⁴⁶⁸ but he did not identify the buildings and the record contains no reference such other buildings. True said she communicated directly with Emerson and Terry about the concessions RFP in February 2018 because she wanted some concerns addressed before the Procurement Section posted the RFP. Those included her feeling that the scope of the RFPO was vague as to "how the contractor would meet the County's strategic plan and equity and social justice strategic plan"; that the draft RFP did not adequately address promotion of local food and beverages;⁴⁶⁹ and that the draft RFP timelines seemed too short to ensure competition in the RFP process.⁴⁷⁰

Emerson sent the edited RFP to Brown, Terry and True on March 5, 2018, noting that "We are scheduled to advertise this week on March 8th. Please let me know as soon as possible if there are any final edits."⁴⁷¹ Shortly after, True sent Smith a text message asking "Rachel, we are ready to advertise the Marymoor Concessionaire RFP on Thursday. Do you have anymore questions?", to which Smith replied "Yes! Can we chat?"⁴⁷² However, True and Smith appear not to have communicated about the matter again until March 9, 2018, four days after Emerson sent her last draft RFP to True.⁴⁷³

Meanwhile, on March 7, 2018, Emerson recommended to Brown that "we allow AEG to exercise their right under the contract to sub contract for concessions" based on information she had received from WSLCB indicating that a new liquor license for a different concessionaire would likely not be issued in time for summer programming at the Park. Emerson pointed out that her recommendation would result in Parks retaining the same 10% for concert concessions as the Parks/SES agreement.⁴⁷⁴ Later that day, Emerson sent Brown the draft concessions agreement and RFP with updated language including Clise Mansion, who forwarded it to True explaining the timing challenge for a new liquor license. Brown listed three options in his message to True: (1)

⁴⁶⁶ OMSBUDS 422.

⁴⁶⁷ True Response at 8.

⁴⁶⁸ Brown Answer to True Response at 10.

⁴⁶⁹ Brown later asserted that inclusion of the local food and beverage criterion gave SES "an immediate advantage" due to Charles' ownership of Local 360 Café & Bar, which focuses on locally-sourced fare. Brown Answer to True Response at 11.

⁴⁷⁰ True Response at 9; OMSBUDS 426.

⁴⁷¹ OMSBUDS 425.

⁴⁷² CONSTANTINE 000017.

⁴⁷³ *Id.* at 000017-000019.

⁴⁷⁴ OMSBUDS 427.

move ahead with the RFP for a new concessionaire and "push on" WSLCB to compress the license issuing schedule; (2) extend the SES agreement through the concert season "to allow us the time needed"; and (3) allow AEG to exercise its right to subcontract with a concessionaire.⁴⁷⁵ In statements provided to the Ombuds, Brown later wrote that he recommended option (3) to True,⁴⁷⁶ but his March 7 email to her containing the three options does not state that, and the only other mention of it in the record is a later (March 26) email from Brown to Emerson stating that "our recommendation was to allow AEG to obtain their own concessionaire."⁴⁷⁷

On March 8, 2018, True sent edits back to Brown and Emerson., noting the previous draft had "made it look like at our sole discretion we would just pull out Clise so I modified that. Are you ok with these changes? I think we need to just push ahead on doing this now ... if you accept these changes I will try to get a green light quickly."⁴⁷⁸ However, Parks had previously advised Procurement of its short timeline and "arranged a go live date awhile back"; thus, Procurement posted the RFP on March 8, even though True had not communicated her approval to do so.⁴⁷⁹ The following day (March 9), True texted Smith as follows:

FBOD [Procurement] posted it even though we told them we are still working on it. They said they would just issue addendums and my people just went along with that even though I told them not to issue it yet. Very frustrated right now. They are trying to reach [Procurement] now and will pull it back⁴⁸⁰

On Sunday March 11, 2018, True noticed the RFP was still available online, and instructed Brown and Emerson to be sure it would be removed the next day, stating "please do not take any further action until you hear from me."⁴⁸¹ On the morning of March 12, 2018, True emailed Brown and Emerson that "It is really unfortunate that the time is constrained now" and expressed concern about the start of the concert series.⁴⁸² That afternoon, Emerson cancelled the RFP posting,⁴⁸³ and True texted Smith asking "What would you say if we extended SES for this season and posted the RFP in the fall?" Smith replied "I would say you are a mind reader. Chat for a min?" Smith's March 5-12 text string with True was forwarded to Constantine's personal Gmail account.⁴⁸⁴ True later said she had viewed allowing AEG to subcontract with its own concessionaire as viable, but such option "would not provide a food and beverage concessionaire for Cirque so Parks would

⁴⁷⁵ *Id.* at 428-429.

⁴⁷⁶ Brown Answer to True Response at 11.

⁴⁷⁷ OMSBUDS 450.

⁴⁷⁸ OMSBUDS 431.

⁴⁷⁹ See OMSBUDS 436.

⁴⁸⁰ CONSTANTINE 000019.

⁴⁸¹ OMSBUDS 436.

⁴⁸² *Id.*

⁴⁸³ OMSBUDS 437.

⁴⁸⁴ See CONSTANTINE 000019; Smith 5/21/19 at 01:34:10.

have to move quickly to run an RFP process and have a vendor hired in time for Cirque."⁴⁸⁵ True "believed this is why Parks staff chose to extend SES through 2018."⁴⁸⁶ However, Brown had a different recollection of the decision making process and asserted that it was True, not Parks staff, who made the decision to extend SES' agreement.⁴⁸⁷

Parks extended SES's 2013 agreement twice. The first extension to April 29, 2018 was done because the agreement would have expired in the middle of Teatro ZinZanni's Marymoor Park performance schedule.⁴⁸⁸ The second extension to November 17, 2018 was done to cover the event season at the Park.⁴⁸⁹

On March 19, 2018, Brown emailed True informing her the erroneously advertised concessions RFP had been taken down and asked for her input on several issues, including "Should we work with the PAO on SES extension and would you like to see it before final. And given that we have extended beyond the 5 year period, we will need some direction on how to address Council issue of their review of contracts longer than 5 years."⁴⁹⁰ True asked for more information about this requirement the next day:

With respect to extending the current contract I assume you are not negotiating any new terms just making an amendment extending the time so it seems like you would fo low [sic] your normal process. I believe you have already extended it once before. If it is normal for you to work with the PAO on an amendment then I assume that is what you should do.

This is the first I have been made aware that there is a council issue with respect to this contract exceeding 5 years. Jessica did not mention this in her 3/8 email to me indicating extending the current contract could be an option since we were running out of time to do the RFP. I would like to know more about what the requirement is and then we can discuss next steps.⁴⁹¹

⁴⁸⁵ True Response at 10. It is not entirely clear why True would have believed that Cirque du Soleil could not have subcontracted with a concessionaire just as AEG could have. However, Emerson mentioned the possibility that allowing the SES agreement with Parks to expire might also result in termination of SES's liquor license. Emerson 1/23/19 at 03:00:32.

⁴⁸⁶ *Id.*

⁴⁸⁷ OMSBUDS 448 ("We are following your instructions to pull the RFP and grant SES an extension."); Brown Answer to True Response at 12.

⁴⁸⁸ TRUE 311; BURNS 845; Emerson 1/23/19 at 01:52:25.

⁴⁸⁹ TRUE 310.

⁴⁹⁰ OMSBUDS 452-53.

⁴⁹¹ OMSBUDS 453.

Brown followed up by email on March 20, 2018 regarding extension of the SES contract, and asked True to "Please let us know what you think we should do, if anything, about any Council approval or process required with this directive."⁴⁹² True responded later that day, stating:

Unfortunately I can't just tell you what to do because I don't know. When Jessica proposed this option, I thought she knew that it could be done and you also indicated you thought this was a good solution. So my next steps would be to find out what procurement recommends and the PAO. Normally I would expect the division to do this work but apparently you want me to. Is that right? I have no idea why the council should have to review it. Who told you this?⁴⁹³

On March 27, 2018, True emailed Brown, Emerson, and Terry indicating that she spoke with Danielle Hinz (Hinz), King County's Chief Procurement Officer, and that extending the SES contract would require a waiver to be drafted and approved.⁴⁹⁴ True also said "I am not aware of any requirement for council review and approval and neither is Danielle. There is no need for PAO engagement. If there is something different about this contract that requires PAO and council review you will need to tell me why."⁴⁹⁵ Subsequent emails between True and Emerson discuss which KCC section governs the concessions contract and True recommending Emerson confer with Hinz about the matter.⁴⁹⁶ On March 30, 2018, True emailed Hinz about the concessions contract and let her know that instead of extending the SES contract, Parks would issue a new one-year contract.⁴⁹⁷ Hinz replied that "Sounds good" and raised no concerns about any Council approval requirement.

AEG and SES Contract Performance

Burns provided information from Parks records showing steady overall increases in total Marymoor Park revenues to the County, with approximately \$1 million received in 2004, rising to approximately \$3.75 million by 2015. Parks revenues from Concerts at Marymoor, including receipts from concessions, were inconsistent during the TLG era (2003 through 2012), with sharp increases beginning in 2013, AEG/SES's first season at the park. The concert series brought nearly \$275,000 to Parks in TLG's first year (2003) and \$388,873 in AEG/SES's first year (2013). By 2016, Parks receipts from AEG/SES totaled a record \$723,717. Brown agreed "the partnership with AEG has been very successful."⁴⁹⁸ He also noted "it is entirely possible that Monqui would have been

⁴⁹² OMSBUDS 452.

⁴⁹³ OMSBUDS 452 (internal paragraphs collapsed).

⁴⁹⁴ OMSBUDS 458-59.

⁴⁹⁵ OMSBUDS 459.

⁴⁹⁶ OMSBUDS 458.

⁴⁹⁷ OMSBUDS 462.

⁴⁹⁸ Burns Response at 14 and attached chart, citing Parks Fourth Quarter Reports for years 2003-2016.

equally successful had a fair and transparent RFP process been implemented. There may have been other parties who could have achieved the same results as well."⁴⁹⁹

Regarding the service provided by SES during the time he was involved in the concert series on behalf of AEG, Kochan said "I could never figure out where it went wrong ... they would say the County didn't ... ante up something ... but I was very unhappy with their work ... it was really poorly done."⁵⁰⁰ He said SES provided food trucks the first year, but it "looked rinky-dink" with too few offerings and long lines. Kochan's expectation that SES would be offering "great organic food ... never panned out", though Kochan placed some responsibility on AEG for not adequately investing.⁵⁰¹ Kochan acknowledged the concert concessions improved in the 2014 season, and did not know the extent of additional improvements in the five seasons after he left AEG.⁵⁰²

The SES concession agreements have produced no receipts to Parks other than from the concerts at Marymoor.⁵⁰³ Revenue to Parks from those concert series concession sales to date are:

YEAR	SES REVENUE TO PARKS
2013	\$18,964
2014	\$99,602
2015	\$121,542
2016	\$118,640
2017	\$126,148
2018	\$124,332
2019	<i>pending</i>
TOTAL	\$609,228

Source: Parks concert revenue spreadsheet⁵⁰⁴

Burns acknowledged that "facility rentals at Clise Mansion have not performed as well as hoped under AEG/SES" but pointed out that overall revenue from Parks' selection of AEG/SES "is much higher than projected at the time the agreement was signed."⁵⁰⁵ Brown disagreed that the SES agreement was beneficial to the County, citing the five years during which Clise Mansion was not utilized; the "1/3 split of sponsorship revenue despite [SES] not bringing in any sponsorship";⁵⁰⁶

⁴⁹⁹ Brown Answer to Burns Response at 10.

⁵⁰⁰ Kochan 6/25/19 at 55:24.

⁵⁰¹ *Id.* at 56:40.

⁵⁰² *Id.* at 01:04:19.

⁵⁰³ Terry email to Stier, June 25, 2019.

⁵⁰⁴ Concert Concessions Revenue Excel Spreadsheet, attached to Terry email to Stier (July 13, 2019).

⁵⁰⁵ Burns Response at 14.

⁵⁰⁶ OMSBUDS 284 (from 2013 through 2016 the County secured sponsorships in the amount of \$535,000, AEG secured \$188,150, and SES secured \$0. Including the 1/3 split and 20% finder fees provided by the 2013 AEG/SES agreements, the County retained total sponsorship revenues of \$230,632, AEG retained \$161,262, and SES retained \$106,783.

SES not paying the 10% gross concessions receipts to Parks from Cirque du Soleil and Teatro ZinZanni performances; and the difficulty for Parks staff in working with Meinert and Charles.⁵⁰⁷

Emerson said that while Parks' trust in SES to "negotiate in good faith" was damaged, "there was a trust with the [SES] staff that was on the ground, some very strong trust in the person who was on the ground all the time, Keri. She delivered on everything. She made things happen. Those things worked."⁵⁰⁸

7. FINDINGS

The findings below are organized according to the four broad categories identified in Section 2 above: (1) vendor selection and contract negotiation related to the five-year contract for the Marymoor Park Concert Series commencing in 2013; (2) accommodations made to the vendors who received that contract; (3) vendor selection and contract negotiation related to contracts for the Marymoor Park Concert Series commencing in 2017; and (4) vendor selection for the contract to provide concessions services at the CHOMP! Festival held at Marymoor Park.

The Complaint includes several allegations that stem from the Complainant's perception that Constantine, and True and Burns on his behalf, sought and obtained special treatment of AEG and SES and did so primarily due to Constantine's close relationships or prior connections with SES principals Meinert and Charles. However, Constantine and Charles both denied a close relationship and the record supports that conclusion. While the record contains some evidence showing what appears to be personal rapport, familiarity, shared interests and coordination between Meinert and Constantine (and his chiefs of staff), Constantine and Meinert both denied a close relationship, and the number of documented communications between them is small given the multi-year timeframe at issue. While the relationship between the two was longstanding, the record does not support a conclusion as to the degree of significance, nor that the relationship resulted in improper governmental action or abuse of authority.

The Complainant believed that True and Burns shared his perceptions about the Constantine/AEG/SES relationship, but True and Burns both disagreed that it motivated their actions. True's and Burns' beliefs about the Constantine/Meinert/Charles relationship could have influenced their actions regarding the AEG and SES contracting and implementation processes. Brown's belief of a close relationship is uncorroborated and the record elsewhere does not contain sufficient evidence to support a conclusion that True and Burns shared Brown's perception. However, if True and/or Burns believed the relationships were close and that Constantine would have wanted them to accommodate AEG/SES, they may have felt pressure to do so; this is addressed in Section 8, Ombuds Comment and Recommendation.

⁵⁰⁷ Brown Answer to Burns Response at 10.

⁵⁰⁸ Emerson 1/23/19 at 02:50:58.

The Complainant also alleged that the involvement of the County Executive's chiefs of staff in details of contract award, negotiations and administration in this case indicated an improper use of authority. Brown believed that Yang's involvement in the contracting and implementation processes at issue was highly unusual, inappropriate, and amounted to pressure to accommodate AEG and SES on Constantine's behalf, and that the involvement of Smith (Yang's successor) was similar. Other Parks staff also testified that they felt influence or pressure from Constantine or his office beginning with the January 2012 gathering at Local 360, continuing through contract negotiations, extensions, implementation, and planning. Yang's involvement was sustained and substantial. Parks staff testified that they had experienced little or no previous similar involvement regarding other significant contracting opportunities. However, most of those other contracting processes occurred under the administration of Constantine's predecessor, whose interests, priorities and management style may have differed from Constantine's. Moreover, Constantine's longstanding interest in the music scene and his stated vision for improving and expanding the Marymoor Concert series provides a reasonable explanation for the Executive's comparatively greater involvement in the Marymoor Parks Concerts. Though the Ombuds understands and takes at face value that Brown felt intruded upon by Yang's and Smith's involvement, the evidence is insufficient to conclude that their activities amounted to an improper use (or abuse) of authority.

The Ombuds makes its findings based on a preponderance of the evidence standard of proof. A preponderance exists if the Ombuds determines, considering all the available facts and circumstances, that an allegation is more likely true than not.

Group 1: Findings On Allegations Related to Selection and Initial 2013 Contracts with AEG and SES

The Ombuds does not find Brown's allegations of misconduct by Constantine, True, and Burns related to the initial 2013 Marymoor Park Concert Series contracts with AEG and SES to be supported by a preponderance of evidence.

Allegation: Constantine Directed Yang to Find a Strategy to Terminate TLG Contract and Replace TLG with AEG/SES

The evidence shows that there were issues regarding The Lakeside Group's performance under its contract, including TLG's failure to present the agreed number of concerts each summer, but that a review of the contract by the PAO found that early termination of the contract presented risks to the County. Based on this information, the County chose to allow the TLG contract to expire without renewal. Because the TLG contract was allowed to expire, AEG and SES did not replace TLG as vendors for the concert series during the term of TLG's contract.

Moreover, Constantine did not recall directing efforts to determine whether TLG was in breach. Yang admitted only that he may have asked someone to see whether the PAO believed there was

a basis to terminate the contract, but he denied handpicking AEG/SES to replace TLG. The PAO memo itself hardly supports Brown's allegation, as the memo did not propose a strategy to terminate so much as state the risks to the County of doing so. No other evidence corroborates Brown's allegation.

Accordingly, the allegation that Constantine directed Brown and Yang to identify a strategy to immediately find the Marymoor Park promoter in breach of contract and replace them with AEG and SES is not sustained as an abuse of authority or gross mismanagement under the KCC.

Allegation: At True's Direction, Burns had Parks Hold an Abbreviated and Unpublished RFP Process to Ensure No Competition.

Parks utilized the Big Ideas contracting process in selecting AEG and SES as the vendors for the concert series. The Big Ideas process is separate and significantly different from a traditional RFP because it is open year-round and leaves it to individual applicants to define the scope of proposals that are suggested to Parks. Each year the County invites anyone to make a proposal at any time. Because of this structure, the Big Ideas process does not normally include a submission deadline as a traditional RFP would. The investigation found that Monqui made an inquiry to Parks about the concert series at about the same time AEG and SES submitted their proposal for the 2013 contract. In response to Monqui's inquiry and with consultation from Yang, Parks held off on evaluating the proposal it had already received from AEG and SES to allow receipt of Monqui's submission so Parks could compare the proposals against each other. Burns testified that the two-week time period provided to Monqui (which is not required under the Big Ideas structure) appeared reasonable as Monqui had told Brown they would be submitting their proposal within that time, and Monqui did submit its proposal during this period.

Brown's allegation suggests that the two-week deadline was artificial because the Big Ideas process included no deadline for submission. Parks did exclude a potential third applicant based on the two-week deadline. However, the record does not support by a preponderance a finding that Parks denied that other applicant an opportunity to submit a proposal due to Constantine's relationship with Meinert or Charles. Further, while the Big Ideas contract portal was not publicized specifically to attract Concerts at Marymoor Park applicants, the notion that Big Ideas was an obscure portal used here to hide the opportunity from proposers other than AEG/SES is not supported, as Parks had previously used Big Ideas to secure large and small concession agreements.

Accordingly, the allegations that True and Burns had Parks hold an abbreviated and unpublished RFP process to ensure no competition cannot be sustained as an abuse of authority or gross mismanagement under the Whistleblower Code.

Allegation: True and Burns had Brown Removed from Contract Negotiation to be Replaced by Burns and Yang.

Brown alleges that True and Burns inappropriately removed him from the 2013 AEG and SES contract negotiations and that he was replaced by Burns and Yang. However, Brown testified that the 2013 contract negotiation with AEG was relatively straightforward with very little negotiation because the AEG contract mirrored the AEG proposal, contradicting his assertion that he was removed from the AEG contract negotiations. Accordingly, it appears that Brown abandoned his claim that he was inappropriately removed from the 2013 AEG contract negotiations. Thus, the allegation that True and Burns inappropriately removed Brown from the 2013 AEG contract negotiations is not sustained by a preponderance of evidence.

Brown claims that he was removed from the SES contract negotiations because he repeatedly made comments to True and Burns regarding his opposition to SES stepping away from a number of the commitments made in their proposal to Parks, and the final contract was instead negotiated by Yang and Burns.

True denied that Brown was removed from the contracting process. She testified that her understanding is that Brown's role in the 2013 negotiations was typical of a Division Director—he was kept apprised of the process by his staff, but he was not at the negotiation table, so Burns becoming involved in the negotiations did not affect Brown's role.

Burns testified that he was asked by Yang to get involved in the SES contract negotiations to help finalize the deal after SES complained to Parks and the Executive's Office that negotiations had stalled. Burns also testified that he was "not really" aware of Brown's role in the SES negotiations prior to the time Burns became involved, but that it was his understanding that Dotson was the lead negotiator, not Brown. Further, the record shows that Burns was in contact with Brown about how to help Emerson and Dotson "get sharper on contract details" on January 24, 2013, days before the SES contract was signed by Brown on January 28, 2013.

Yang testified that he was not informed that Brown had been removed from the AEG and SES investigations, and that he assumed Brown was involved the entire time providing support to Burns and Yang.

Dotson called into question the testimony of Burns and Yang regarding Brown's and Parks' involvement in the final negotiations, testifying that he, Emerson, Brown, and others involved in working on and negotiating the SES contract were unaware that an agreement had been reached on the final terms of the contract.

Brown's allegation that he was improperly removed from the negotiation of the 2013 SES contract is not sustained by a preponderance of evidence. As a threshold matter, it is not established that Brown was in-fact "removed" from the negotiations. True and Burns both

questioned Brown's direct involvement in the negotiations prior to January 2013 and the evidence does not establish that Brown was heavily involved. Burns and Yang became involved in January 2013 after SES complained to Parks and the Executive's Office that negotiations had stalled, and it reasonably follows that Burns and Yang would be directly involved in the negotiations with SES in this role.

The record does not indicate that Brown was formally removed or otherwise ordered not to participate, though functionally it appears that he had little to no role at the end. However, Burns' explanation for his increased involvement is plausible, and the record does not support by a preponderance that Brown's role was diminished due to Constantine's relationships with Meinert or Charles. The testimony of Dotson and Brown indicating that they were unaware of the final terms of the agreed contract supports Brown's assertion to the extent that it shows he was not at the negotiating table, but it falls short of establishing that True or Burns inappropriately removed Brown from the contract negotiations in violation of the KCC. Accordingly, the allegation that True and Burns removed Brown from the 2013 SES contract negotiations is not supported by a preponderance of evidence and thus cannot be sustained.

Allegation: True and Burns Directed Brown to Sign the 2013 SES Contract.

Brown alleges that Burns, with True's knowledge or involvement, directed Brown to sign the 2013 SES contract. The investigation found Burns did direct Brown to sign the contract but does not sustain a finding that this direction was an abuse of authority or gross mismanagement.

Brown indicates that he expressed his concerns to both Burns and True regarding the contract with SES in the weeks and days leading up to execution of the contract. However, Brown's description of what occurred the morning he signed the contract shows that despite his belief that the contract was not in the County's best interest, he signed it and included "UD" in his signature to signify he was signing "under duress" due to concerns about possible repercussions if he refused to sign. Burns testified that his understanding from previous conversations was that Brown had concerns about the contract, but was on board to sign it, and that he urged Brown to sign the contract on the date of execution because it was Burns' belief that the contract was a good deal for the County. Rather than refuse to sign the contract based on his concerns, Brown signed and did not tell Burns that he was signing the contract under duress, nor point out the significance of the "UD" in his signature. There is no indication that True directed or was present at the time Brown signed the contract. It is not entirely clear why Burns considered it important that Brown, rather than Burns or True, sign the SES contract when either of those officials could have done so on the County's behalf. But the evidence is, at most, weakly inferential that Burns' direction to Brown was motivated by further direction from Constantine or his office due to relationships with SES's principals, and does not amount to a preponderance.

Accordingly, the allegation that Burns (and True through her knowledge or involvement) committed an abuse of authority or gross mismanagement when Burns directed Brown to sign the 2013 SES contract is not sustained by a preponderance of the evidence.

Allegation: Burns and Yang Directed Brown to Ensure AEG and SES were Awarded Five-Year Concessions Contracts and Coerced Brown to Tell Parks Staff AEG and SES Brought Intangibles that Made Them Better Qualified than Other Applicants.

Brown alleges that Burns and Yang directed Brown to take steps to ensure that AEG and SES were awarded the five-year contract for the Marymoor concert series and concessions. He also alleges that Burns and Yang coerced him into telling Parks staff that potential intangibles AEG and SES brought to the table were the reason for choosing them over a better qualified applicant. Neither of these allegations are sustained by a preponderance of the evidence.

The County received two proposals from vendors interested in the contract, first from AEG/SES and then from Monqui. Because the proposals were received through the Big Ideas process, there was no published evaluation criteria for the vendors to base their proposals. Emerson summarized the initial selection criteria in an email to Brown: revenue for Parks; vision for the series (user experience, public perception, aesthetics); event related logistics, tasks, marketing, promotion, and labor; and collaborative partnership. Yang, Brown, and Burns met prior to Parks' final review of the proposals where Yang indicated that the review should also consider the vendors' size and reach and ability to partner for new events, which is aligned with the vision for a more significant event described by Constantine. Burns acknowledged that Brown was directed to have Parks include additional factors in the evaluation process. That direction came after Parks received both the AEG/SES and Monqui proposals, thereby supporting an inference that the additional factors may have been devised to weight the selection process in AEG/SES's favor. But Burns denied telling Brown that AEG/SES should be selected over a better qualified candidate.

Dotson produced an analysis showing that concert revenues under the AEG/SES proposal would be comparable to revenues received in the prior concert series contract with TLG. Both Dotson and Emerson recalled that the elements of the AEG/SES proposal regarding SES's use of the Clise Mansion were the deciding factors in choosing the AEG/SES proposal over Monqui. The testimony of Emerson and Dotson, who were involved in the selection process, was that Parks picked the AEG/SES proposal based on the evaluation criteria, including those Brown was directed to add. But neither Emerson or Dotson testified that they thought Burns or Yang had directed the selection of AEG/SES. Moreover, the additional evaluation criteria provided by Yang apparently provided an advantage to the AEG/SES proposal, but they also reasonably served the County's interest in building the concert series and better utilizing the Clise Mansion.

In the absence of evidence tending to prove otherwise, the allegation that Burns committed abuse of authority or gross mismanagement by directing Brown to ensure AEG/SES were awarded the 2103 contract for concessions cannot be sustained. Thus, the allegation that Brown

was coerced into telling Parks staff that AEG/SES were better qualified due to the intangibles they brought cannot be sustained as an abuse of authority or gross mismanagement by Burns.

Group 2: Findings on Allegations of Inappropriate Accommodations Provided to AEG and SES

The Ombuds does not find Brown's allegations of accommodations to AEG and SES during the pendency of their 2013 contracts for the Marymoor Park Concert series by Constantine, True, and Burns to be supported by a preponderance of evidence.

Allegations: Constantine Approved SES's Effort to Obtain Additional Revenue Sources Not Intended to be Part of Concessions, Including Not Paying Fees for Cirque Contract, and Obtaining Revenue Sharing for Sponsorships.

Brown alleges that Constantine committed an improper governmental action by approving SES's effort to obtain additional revenue sources not intended to be part of providing concessions for a concert series. These allegations are tied to the contract provision providing a portion of concert series sponsorship revenues to SES and the County's failure to collect 10% of gross concessions receipts from SES for Cirque du Soleil events.

The 2013 contracts with AEG and SES specified that the vendors and Parks would collaborate to obtain and implement concert series sponsorships, with sponsorship revenue divided equally three ways after a 20% finder fee paid to the partner that secured the sponsorship. The investigation uncovered no evidence that Constantine had a role in negotiating or approving this sponsorship provision. Further, even if the investigation found that Constantine had a role in negotiating or approving this provision, its inclusion in the contract does not result in an abuse of authority or gross mismanagement as there is no evidence that Constantine intended to obtain a benefit or deprive another person of a lawful right or privilege. Though SES received a financial benefit for Concerts at Marymoor sponsorships secured by Parks and AEG but did not secure any sponsorships itself, there is no evidence that inclusion of the sponsorship provision is a deviation from the standard of care or competence a reasonable person would exercise in the same situation.

The 2013 SES contract provided that SES would pay the County a fee of 10% percent of gross receipts, except for gross receipts from the Cirque du Soleil event in 2013. Though this carve-out in the contract was to apply only to the 2013 Cirque du Soleil season, Parks did not pursue collection of these revenues from SES in the subsequent years of the contract. The investigation found no evidence that Constantine was aware of, or otherwise condoned or directed, Parks' failure to collect these revenues. The records and testimony provide somewhat contradictory explanations for Parks' treatment of this revenue stream, and Parks staff held some assumptions about what they believed to be the political nature of the SES contract, which may have played a role in how they handled the matter, but no evidence was presented establishing that

Constantine (or True or Burns, at the direction of the Executive's Office) directed Brown or other Parks staff to overlook this requirement.

Accordingly, these allegations are not sustained by a preponderance of evidence.

Allegation: Executive's Office and DNRP Made it Clear that Parks Accommodate SES in any Way, Including County Payment of Deposit for Cirque and SES Attempt to Pay Less than Contract Stated.

Brown alleges that Constantine, True, and Burns committed gross mismanagement, gross waste of public funds, and abused their authority by providing inappropriate accommodations to SES through the County's payment of a staffing deposit that was SES's responsibility and due to SES's attempt to pay Parks 10% of net receipts rather than 10% of gross receipts.

On January 29, 2013, the day after the SES concessions agreement was finalized, Parks was contacted by Adecco, a temporary staffing service company used by Cirque du Soleil for concessions staffing, who informed Parks that Marcus Charles at SES had refused to pay approximately \$9,000 of a \$14,000 deposit it was obligated to provide for Adecco's services. Failure to provide this deposit could have prevented liquor sales at the upcoming Cirque du Soleil event. Because of the importance of the County's partnership with Cirque du Soleil, and because the County was confident the deposit would be repaid, the Executive's Office, DNRP, and Parks jointly agreed to pay the deposit to Adecco even though the deposit was SES's obligation. Burns testified that this decision was not made to accommodate SES, but instead was focused on keeping Cirque du Soleil happy. Brown also acknowledged that this decision was based on the County's interest in ensuring that beverages were served at Cirque du Soleil and that public had a good experience. Though the County's payment of the Adecco deposit did provide a benefit to both SES and Cirque du Soleil, the County's decision to cover this deposit was based on a combination of factors, primarily related to preserving the County's relationship with one of its most important partners at Marymoor Park and ensuring the public was not disappointed with the event.

Brown alleges that Constantine, True, and Burns committed an improper governmental action related to an attempt by SES to pay the County 10% of net receipts rather than 10% of gross receipts set forth in the 2013 contract. SES argued that it owed the County 10% of net rather than gross receipts in July 2013. Parks calculated that this would reduce the per-show concessions proceeds from SES to the County from approximately \$10,000 to approximately \$100. Burns testified that he supported Parks' position on this matter and communicated this position to Yang (who agreed). The County required SES to pay 10% of gross proceeds, as set forth in the contract. SES relented on the issue and paid the County 10% of gross receipts. The investigation found no evidence that the County accommodated SES on this issue and no evidence that Constantine, True, or Burns advocated otherwise.

Accordingly, these allegations are not sustained by a preponderance of evidence.

Group 3: Findings on Allegations Related to 2017 Contracts with AEG and SES

The Ombuds does not find Brown's allegations of wrongdoing related to Parks' negotiation of the 2017 Marymoor Park Concert series contracts with AEG and SES into be supported by a preponderance of evidence.

Allegation: Constantine Pushed for an Extension of Contracts to 20 Years Without Council Approval; a Strategy to Skirt the Council Approval Process (No Need to Consult with PAO) Despite SES's Failure to Perform; and a Plan to Increase Concert Capacity from 5,000 to 7,500 Despite Parks' Concerns.

Brown alleges Constantine and True violated the KCC by directing DNRP and Parks to investigate ways to provide AEG and SES extended 20-year contracts, and to expand the seating capacity of the concert series, both without County Council review. Brown further alleges that True specifically told Brown and Parks staff that they did not need to consult with the Prosecuting Attorney's Office about the one-year contract with SES signed in 2018.

The evidence shows that AEG and SES expressed their interest in extending the contract length and expanding the capacity of the venue, but these changes were never incorporated into the vendors' contracts with the County. The KCC contains no prohibition on expansion of the concert venue at Marymoor Park, so any position taken by Constantine or True regarding expansion of the venue's capacity without evidence of improper motivation, is not a basis for any finding of a KCC violation. The documents and testimony establish that there was confusion at DNRP regarding the requirement for County Council approval of contracts longer than five years, but that once True became aware of the issue she worked with DNRP, Parks, and Finance & Business Operations staff to determine what requirements were applicable and to abide by those requirements. The investigation did not find that Constantine or the Executive's Office directed DNRP or Parks to ignore the requirements identified by True. The contracts issued to AEG and SES comported with those requirements. Accordingly, Brown's allegation that Constantine and True violated the KCC by directing DNRP and Parks to investigate extensions of the concert and concessions contracts and expansion of the venue's capacity without Council review cannot be sustained because the allegations, even if confirmed to have occurred, do not establish an abuse of authority, gross mismanagement, improper special consideration or treatment, or the use of authority to induce or coerce.

Further, True's statements regarding PAO review and Council approval of an extension of the SES contract included her requests for more information about the purported need for these actions and left open the possibility for Brown or others to explain why these actions would be necessary. Brown's allegation that True specifically directed him to not consult with the PAO regarding the extension of the SES contract in 2018 is contradicted by the record and thus cannot be sustained.

Accordingly, these allegations are not sustained by a preponderance of evidence.

Allegation: Multiple Executive's Office Staff Contacted Brown on Constantine's Behalf to Inquire about New AEG Contract and Related Amendments and Renewal of SES Contract.

Brown alleges that Constantine abused his authority, committed gross mismanagement, inappropriately provided special consideration or treatment, and used his authority to induce or coerce through multiple Executive Office staff contacting Brown to inquire about a new AEG contract and new amendments they wanted added to the AEG contract, as well as renewal of the SES contract.

The investigation found insufficient evidence to sustain this allegation. Records and testimony confirm that Executive's Office staff was in touch with Brown and others at Parks regarding AEG's desire to extend the concert series into September. Brown responded via email that Parks had previously been very flexible about approving dates and that he was disappointed that AEG and SES were contacting the Executive and his staff instead of allowing Parks to manage the conversation. While the record supports Brown's allegation of multiple inquiries from the Executive's office about the AEG and SES contracts, and that staff may have viewed those contacts as motivated by a desire to help SES, it does not support a finding that these contacts resulted in a violation of the KCC.

Accordingly, these allegations are not sustained by a preponderance of evidence.

Allegation: True Advised Brown that Constantine Wanted to Ensure SES was Awarded the Next Concessions Contract; and that Parks Could Not Pursue Other Proposals.

Brown alleges that True indicated Constantine wanted to ensure SES was awarded the concert concessions contract, and that Parks could not pursue proposals other than what Constantine directed even if other proposals were superior.

Brown claims that in a closed-door one-on-one meeting, True told him that Constantine wanted to ensure that SES received the contract for concessions, but when Emerson was brought into the conversation, that True instead said that Constantine wanted SES to be eligible to apply through the RFP process. True denies making any statement about Constantine wanting to ensure SES was selected for the contract. Emerson said that a statement by True about wanting SES "to be eligible" to apply for the RFP "sounded familiar", but she could not confirm hearing it. This allegation is not supported by a preponderance of the evidence and thus cannot be sustained.

Brown alleges that True told him there was no way Parks could pursue proposals other than SES's, even though other proposals were better than the SES proposal. True claims she told Brown she

wanted a transparent, open, competitive RFP process using the County's Procurement Section and that she discussed having the concert series RFP posted first and the concessions RFP second to allow time to determine programming objectives at Clise Mansion. Brown denies any specific conversation regarding use of the Procurement Section. True and Brown agree that in May 2017 there was a shared understanding that Parks would use the transparent and competitive RFP process for the next concert and concessions contracts. A March 2018 text message from True to Smith recounted that Constantine previously directed Yang to have separate RFPs issued for the concert and concessions contracts.

The records and testimony show that though Brown acknowledged there was an understanding that the concessions contract would be run through the traditional RFP process that was shared (and directed by) the Executive's Office, but that Brown proceeded to ask Emerson and Dotson to aggressively recruit potential partners for the concessions contract outside of that RFP process. Brown provided somewhat contradictory testimony, stating that Parks had not been actively soliciting Big Ideas proposals for concessions at Marymoor Park, but also acknowledging he had "moved forward on two tracks. I am like, if we're going to do an RFP as they're asking us to do, we are going to make sure that we beat the streets and get as much competition out there as possible." Emerson testified that Brown said he had briefed True on the new proposals, including potentially awarding a contract through the Big Ideas process, and that True had okayed that. Brown admitted that he did not tell True that he was moving forward on two tracks or considering use of the Big Ideas portal.

Brown and True met on November 22, 2017, to discuss Brown's efforts to recruit concessionaires other than SES for Marymoor Park, which True had learned of from Burns. Brown claims that True said that Brown's efforts to recruit concessions partners outside of the traditional RFP process was not what Constantine expected and that she could not deliver this message to Constantine. True denied telling Brown that she could not bring proposals other than those including SES to Constantine. She explained that her concerns arose from the fact that Constantine and the Executive's Office were expecting a formal RFP process, so soliciting proposals outside of the RFP process and in a manner that would exclude SES from being able to compete would be contrary to what had been discussed for several months. True's account can be viewed as largely consistent with a written statement Brown provided to the Ombuds regarding the November 22, 2017 meeting, which states that True told him "this is not at all what we agreed on. This is not at all what the Executive is expecting and you did not brief me on this Her position was that she had given very clear direction of what the Executive was expecting and there is no way she can go back to him with something else." At the same time, Brown's typed statement can also be viewed as consistent with his version of what True said in the meeting.

The evidence shows that True's statement that she "could not go back to [Constantine] with something else" could just as plausibly refer to her being unwilling to tell Constantine that Parks chose to forego the RFP process and instead select a vendor through the Big Ideas process, as it

could refer to her alleged (according to Brown) inability to bring a proposal other than SES's to Constantine. Because the documents and testimony do not support this allegation by a preponderance of evidence, it cannot be sustained.

Allegation: True Directed Brown to Develop RFP Process that True and Constantine Must Preapprove.

Brown alleges he was directed by True to develop an RFP process that was to be preapproved by True and Constantine, resulting in an abuse of authority, gross mismanagement, improper special consideration or treatment, and use of authority to induce or coerce. Constantine and True, by virtue of their positions, had the authority to require preapproval of the RFP. Accordingly, to sustain the alleged code violations it must be shown that the purpose underlying True's preapproval requirement was improper. As discussed above, there is not a preponderance of evidence regarding Constantine's motives viz-a-viz SES's principals; nor regarding True's beliefs about the nature of those relationships.

The record does not provide a preponderance of evidence to support a finding that True violated the KCC by requiring Brown to submit the concessions RFP for approval by Constantine and True prior to its release to the public.

Allegation: True Directed Parks to Pull the RFP and Instead Draft a One-Year Contract Extension for SES.

Brown alleges that by abruptly directing Parks to pull an RFP for concessions and instead draft a one-year contract extension for SES, True committed an abuse of authority, gross mismanagement, improper special consideration or treatment, and improperly used her authority to induce or coerce. These allegations are not supported by a preponderance of evidence.

In early-2018, Emerson prepared and sent a draft scope of work for the Marymoor concessions RFP to True, Brown, and Terry. True reviewed the draft, provided edits, and subsequently communicated directly with Emerson and Terry about concerns she had with the RFP that would need to be addressed before it was advertised. Emerson sent the RFP to True, Brown, and Terry on March 5, 2018, asking for any final edits and noting that it was scheduled to be published on March 8. An unapproved version of the RFP, which did not include True's final edits, was published on March 8, 2018. On March 11, 2018, True directed Brown and Emerson to have the RFP taken down and to not take any further action until they heard from her. On this information, Brown's allegation that the withdrawal of the RFP was inappropriate cannot be sustained by a preponderance of evidence.

Further, Brown had already emailed True on March 7, 2018 (prior to issuance of the RFP), expressing concerns that Parks could end up without a concessionaire with a liquor license when

the concerts started based on the timeline for WSLCB license issuance. In that message, Brown suggested three options: (1) move forward with the RFP and push on the WSLCB to compress the licensing schedule; (2) extend the SES agreement through the concert season to allow Parks the time needed to address the liquor license issue; or (3) allow AEG to exercise its right to subcontract with a concessionaire. Based on this concern, which was exacerbated by the delay stemming from withdrawal of the RFP, True followed Brown's suggestion and directed Parks to draft an extension of the SES contract through the end of 2018. The evidence shows that Brown suggested an extension of the SES contract through the concert season, and thus the record does not sustain Brown's allegation that True's decision to extend the SES contract was a violation of the KCC.

Group 4: Findings On Allegations Related to CHOMP! Festival

The Ombuds does not find Brown's allegations of abuse of authority, mismanagement, or special consideration to be supported by a preponderance of evidence.

Allegation: Constantine Wanted SES to Run the New CHOMP! Festival and Called Meetings to Find Out Why AEG and SES were Not Involved when Another Group Received the Contract

Brown alleges that Constantine informed SES that the County had funding for a new fair, that he wanted SES to run the fair, and that Constantine called meetings to determine why AEG and SES were not involved when he learned another group had obtained the contract for the CHOMP! Festival, and that in doing so Constantine committed an abuse of authority, gross mismanagement, improper special consideration or treatment, and improperly used his authority to induce or coerce. The record does not support this allegation by a preponderance of the evidence.

In Spring 2015, Parks was searching for a musical performance for the inaugural year of the CHOMP! Festival to be held at Marymoor Park. Parks first reached out to AEG, then asked Constantine to reach out to Meinert to see if he could help find an artist to perform. Constantine made this request via an email drafted by True. Meinert replied that he could not help with a musical act, but he assumed that SES would be selling beer at the event and offered assistance in obtaining a beer sponsor. Constantine responded that they should have a meeting with the event organizers and followed up by forwarding the email chain to True and asking her to set up a meeting between Parks, Meinert, and Charles. In January 2016, True sent an email to Brown, Emerson, Terry, and Hughes indicating that AEG and Meinert had met with Constantine to discuss ideas, and that they should meet with Constantine soon to discuss CHOMP! and "download from last year and talk about next year." A series of meetings involving Brown, Burns, Yang, Meinert, and Charles occurred in January and February 2016, which Brown described as focusing on an extension of the concert and concessions contracts to 15-20 years, expansion of the concert venue capacity, and the possibility of SES becoming the concessionaire for CHOMP!. In late-

January Burns sent Brown a list of follow-up questions, which asked "What were the circumstances by which AEG was not eligible to apply for CHOMP![]" Brown explained that AEG did submit an application, but it was turned in after the deadline.

The record does not establish by a preponderance of evidence that Constantine's discussions of the CHOMP! Festival with AEG and SES, or his subsequent interactions with Parks or DNRP regarding the festival, resulted in any violation of the KCC.

8. OMBUDS COMMENTS AND RECOMMENDATION

The Ombuds has reviewed, correlated and evaluated extensive records and testimony to reach the findings in Section 7 above. As noted in Section 3, the Ombuds operates independently within the legislative branch of County government and is vested in KCC Chapter 2.52 with authority to investigate the administrative conduct of County agencies and employees in response to complaints from the public or on the Ombuds own initiative, and to make and publish findings and recommendations for improving the administration of County government. This Complaint was investigated pursuant to the Employee Whistleblower Protection Code, KCC 3.42. The Ombuds provides the following comments and recommendation pursuant to Section 3.42.057.G which states, in part, that the Ombuds shall make a final report summarizing the results of the investigation, including findings with regard to each allegation and recommended actions.

The Ombuds recommends that the Executive develop and issue guidelines for the roles and responsibilities of Executive staff and Departmental staff in the solicitation, selection and administration of contracts. The Executive and staff may appropriately wear "two hats," relating to the administration of County government and relations with constituents (some of whom may have business pending with County government). The Executive and staff may engage with Department staff at all levels to provide guidance and in efforts to ensure that the administrative acts are consistent with the vision, goals and intentions expressed by the King County Executive. This engagement with Departments can have a positive influence on the administration of county government. The Executive and his staff may also engage with constituents, including those who may have business pending with the County, to ensure that their concerns are being heard and considered. This engagement with constituents can promote public confidence in government.

While each of these Executive functions is appropriate, taken together, these two roles have the potential to influence the County's solicitation, selection and administration of contracts in ways that may not prioritize the County's interests. Department staff may perceive the engagement of the Executive and his staff as signaling desired positions and outcomes related to contracts. The Ombuds did not find that any allegations of this Complaint are supported by a preponderance of the evidence, but testimony of the Complainant and other Department staff indicates that staff perceived the engagement of the Executive staff as signals and felt pressure to take actions that would be responsive to those perceived signals. When this occurs, there is the potential for Department staff, and therefore the County, to be disadvantaged in negotiations with other

parties. Guidelines for the participation of the Executive and Departments in the solicitation and selection processes for and the administration of contracts with the County could improve the administration of County government and promote public confidence.

The Ombuds notes that the Executive recently forwarded legislation to the County Council that is intended to clarify the contracting process for the Marymoor Park live music concert series, including concessions, consistent with this recommendation.

The Ombuds appreciates the full cooperation of the Complainant, Respondents, all witnesses, and County staff who supported requests for records and interview scheduling during the investigation.